

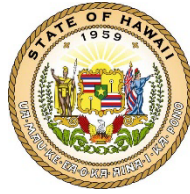
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. SP73-147
GRACE PACIFIC CORPORATION)
To Amend the Special Permit To (1) Extend) FINDINGS OF FACT, CONCLUSIONS OF
the Life of Quarry to 2047, (2) Reshape) LAW, DECISION AND ORDER,
Permitted Mining Area, (3) Expand Hours of) APPROVING MOTION TO AMEND
Operation, and (4) Permit a Ready-Mix) AND CERTIFICATE OF SERVICE
Concrete Plant in Quarry Pit at Pu'u)
Makakilo, 'Ewa, O'ahu, Hawaii'i, Tax Map)
Key Nos.: 9-1-16: 004 and 9-2-03:074 (por.))
and 082 (por.))
_____)

FINDINGS OF FACT.
CONCLUSIONS OF LAW, DECISION AND ORDER
APPROVING MOTION TO AMEND
AND
CERTIFICATE OF SERVICE

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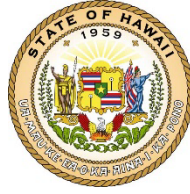
BY _____
DANIEL E. ORODENKER
Executive Officer



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FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER APPROVING MOTION TO
AMEND

The State of Hawai'i Land Use Commission ("LUC" or "Commission"), having examined the complete record of the City and County of Honolulu Planning Commission ("Planning Commission") on Grace Pacific's ("Applicant" or "Petitioner") application to amend ("2024 Motion to Amend") the State Special Permit SP73-147 (County Special Use Permit No.2007/SUP-6), to (1) extend the Makakilo Quarry resource extraction and processing operations by 15 years to 2047; (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; and
(4) operate a ready-mix concrete plant in the quarry pit.

The Commission recognizes and incorporates the records from the original Decision and Order in this matter dated March 23, 1973 (“1973 Order”) and the 2008 Motion to Modify dated November 7, 2008 (“2008 Order”).

The Commission, having heard and examined the testimony, evidence, and argument of counsel for the Petitioner and other Parties presented during the August 21, 2024, hearing, along with the pleadings filed herein, and public testimony received, makes the following Findings of Fact, Conclusions of Law and Decision and Order Approving the Applicant’s 2023 Motion to Amend.

If any statement denominated a finding of fact is more properly considered a conclusion of law, then it should be treated and construed as a conclusion of law; and conversely, if any statement denominated as a conclusion of law is more properly considered a finding of fact, then it should be treated and construed as a finding of fact.

FINDINGS OF FACT

BACKGROUND OF THE APPLICATIONS

2023 Motion to Amend to the Planning Commission

1. On July 25, 2023, the Department of Planning and Permitting, City and County of Honolulu (the “Department”), accepted the Application for processing. [2024 Planning Commission’s Record, Exhibit 11, FOF 1]

2. On January 31, 2024, the Department issued its Director's Report recommending approval of the Application subject to conditions. [2024 Planning Commission's Record, Exhibit 11, FOF 5]
3. The Department and the Applicant negotiated revisions to the recommended Conditions 18, 19, and 20 in the Director's Report. On March 1, 2024, the Applicant sent a letter to the Planning Commission explaining the proposed revisions. [2024 Planning Commission's Record, Exhibit 11, FOF 8]
4. The Planning Commission received written testimony from members of the public in support of and in opposition to the Application. [2024 Planning Commission's Record, Exhibit 11, FOF 9]
5. Public notice of the March 6, 2024, hearing was published by the Department in the Honolulu Star-Advertiser on February 5, 2024. [2024 Planning Commission's Record, Exhibit 11, FOF 6]
6. On March 6, 2024, the Planning Commission conducted an in-person and remote public hearing at the Fasi Municipal Building, 6th Floor Conference Room, 650 South King Street, Honolulu, Hawaii 96813. [2024 Planning Commission's Record, Exhibit 11, FOF 10]
7. 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 as set forth in the

Applicant's March 1, 2024, letter to the Planning Commission. [2024 Planning Commission's Record, Exhibit 11, FOF 11]

8. On May 29, 2024, the Planning Commission approved the request to amend 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 for certain uses, allowance of ready-mix concrete batching, and increased in-person reporting requirements to the Planning Commission. [Planning Commission 2024 Record, Exhibit 11, Conditions, pg.35-38]
9. On July 29, 2024, the Planning Commission transmitted their record of approval and recommendations on the motion to amend the Special Permit.

2024 LUC Proceedings Motion to Amend

10. Between March 5 and March 27, 2024, the Commission received public communications from the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 (a resolution), Deborah Agles and Mark Felman.
11. On July 29, 2024, the Commission received the record from the Planning Commission for the 2023 Motion to Amend Conditions in the State Special Use Permit ("SP") SP73-147¹. The record was stamped and posted on the Land Use Commission website for public review.

¹ Also referred to as the State Land Use Commission Docket No. SP73-147. The Planning Commission's SUP File No. 2007/SUP-6 superseded File No. 72/SUP-1. However, the Land Use Commission considered a 2007 request for an amendment to the original SUP and retained the original Docket No. SP73-147. Although the Land Use Commission and Planning Commission have referred to the SUP under different docket numbers, SP73-147 and 2007/SUP-6 refer to the same special use permit.

12. On August 12, 2024, the Commission mailed and emailed the Agenda and Meeting Notice for August 21, 2024, to the parties and the Statewide and O‘ahu mailing lists.
13. On August 12, 2024, the Commission received written public testimony from Dr. Kioni Dudley.
14. On August 14, 2024, the Office of Planning and Sustainable Development (“OPSD”) filed their Memorandum to Approve Petition, which was posted on the Land Use Commission website and made available for public review.
15. On August 19, 2024, the Commission’s Staff Report was posted to the Commission website and made available for public review.
16. Between August 19 and August 21, 2024, the Commission received written public testimony from: Daryl Tracey, Anthony Makana Paris, Mark Felman, Dr. Kioni Dudley, Operating Engineers Local Union No. 3, Kevin Holu, Hawai’i Teamsters & Allied Workers Local 996, Peter Ganaban for Laborers International Union Local 368, Kapolei Chamber of Commerce, State Representative Kanani Souza, State Senator Mike Gabbard, and HC&D. The submittals were posted to the Commission website and made available for public review.
17. On August 21, 2024, Hawai’i Teamsters & Allied Workers Local 996 requested to rescind their testimony. The submitted correction was posted to the Commission website and made available for public review.
18. On August 21, 2024, the Land Use Commission held its meeting in person, at 9:00 a.m., at the Filipino Community Center, Flores Ballroom, 94-428 Mokuloa Street, Waipahu, Hawai’i, to consider the Planning Commission’s May 29, 2024, Findings of Fact,

Conclusions of Law, Decision & Order. Calvert Chipchase, Esq., Jarrett Dempsey, Esq., and Scott Komatsu appeared on behalf of the Applicant – Grace Pacific. Patricia Sendao, Esq. and Franz Krintz appeared on behalf of the City and County of Honolulu Department of Planning and Permitting (“DPP”). Allison Kato, Esq. and Katia Balassiano appeared on behalf of the State of Hawai‘i Office of Planning and Sustainable Development (“OPSD”).

19. At the August 21, 2024, meeting, the following commissioners were in attendance: Brian Lee, Bruce ‘U‘u, Dan Giovanni (Chairman), Mel Kahele, Michael Yamane (Vice Chairman), Myles Miyasato, and Nancy Carr Smith. Commissioner Kuike Kamakeo-‘Ohelo was excused and Ken Hayashida was recused.²
20. At the August 21, 2024, meeting, the LUC heard public testimony from the following members of the public: Dr. Kioni Dudley [Tr. 8/21/2024, pgs. 23-29], Ana Tuiasasopo [Tr. 8/21/2024, pgs. 19-23], Peter Iriarte [Tr. 8/21/2024, pgs. 29-31], and Gino Soquena [Tr. 8/21/2024, pgs. 31-34].
21. At the August 21, 2024, the LUC then heard presentations from the Applicant through Scott Komatsu (Grace Pacific) who was sworn in [Tr. 8/21/2024, pgs. 35-62] and OPSD through Katia Balassiano who was sworn in [Tr. 8/21/2024, pgs. 63-68]. DPP gave no presentation but stated it supported adoption of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order dated May 29, 2024 [Tr. 8/21/2024, pgs. 62-63];

² Commissioner Ken Hayashida recused himself, as he had considered this matter as a member of the City and County Planning Commission. Commissioners were given the opportunity to disclose conflicts of interest or other disclosures at the August 21, 2024, hearing. No other conflicts of interest or other disclosures were made.

22. The LUC then reopened public testimony. One member of the public testified: Dr. Kioni Dudley. [Tr. 8/21/2024, pgs. 69-74]
23. After the Applicant – Grace Pacific, was given the opportunity to provide final comments and addressed questions from the Commissioners, the LUC then entered deliberations on this matter. Following discussion, a motion was made and seconded to approve the Application as recommended by the Planning Commission with the exception of a change from four to five sight line approaches in Condition 2. After additional discussion, a vote was taken on this motion. There being a vote total 7 ayes and 0 nays, one excused and one recused, the motion passed. [Tr. 8/21/2024, pgs. 107-108]

FINDINGS BY THE COMMISSION

1. The Makakilo Quarry requires a special use permit for its operations. Its current special use permit was issued by the LUC on November 7, 2008, and remains in full force and effect. [Planning Commission 2024 Record, Exhibit 11, Finding of Fact 32, pg.7]
2. The existing pit and proposed expansion area are rated under the Land Study Bureau (“LSB”) Master Productivity as “E”—the lowest agricultural productivity rating. The Lower Quarry contains soils rated “A,” “B,” “D,” and “E” with the majority of this site falling within the “A” and “B” ratings. [Planning Commission 2024 Record, Exhibit 11, Finding of Fact 25, pg.6]
3. The Application Area does not include land designated as Important Agricultural Lands (“IAL”), as defined by Hawai’i Revised Statutes (“HRS”), Chapter 205, Part III. [Planning Commission 2024 Record, Exhibit 11, Finding of Fact 26, pg.6]

4. 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 Pālailai 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 11, Finding of Fact 40, pg.10]
5. A Ka Pa‘akai analysis (“CIA”) 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 11, Findings of Fact 88 and 89, pg.22]
6. The CIA 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 11, Findings of Fact 80-81, pgs. 22-23]

7. The CIA 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]
8. Based on its review of the CIA, the DPP recommended 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. The DPP additionally recommended dissemination of information to community members regarding other required environmental testing (and their results) for the proposed expansion and planned changes to operations. Finally, the DPP recommended continued 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]

9. The Planning Commission recognized the DPP's review of the CIA and its finding 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 11, Finding of Fact 92, pg.23; Planning Commission 2024 Record, Exhibit 11, Conditions 9, 17, 19, and 20, pgs.36-38]
10. The extension of the permit to 2047 and the expansion of the quarry operating hours, which are based on the identification of new resources and changing market demand, would result in continued local production of A-Grade and B-Grade aggregate, thereby reducing the need to import aggregate from other locations (including the mainland) and avoiding transportation and other costs associated with importing aggregate or transporting aggregate from quarries that are situated further from worksites. [Planning Commission 2024 Record, Exhibit 11, Finding of Fact 48, pg.10]
11. If Makakilo Quarry were closed, rock supplies from other quarries (such as Kapa'a and Hālawā) would need to be dramatically increased at higher costs, as these sources are located farther away from job sites in 'Ewa, Kapolei, and central O'ahu. Rock from other local quarries could not economically replace this loss, and there is not another local source that can be timely established to replace Makakilo Quarry. [Planning Commission 2024 Record, Exhibit 11, Finding of Fact 49, pg.11]

12. Current rates of extraction and greater recycling efficiency will likely prolong the life of this resource. To be conservative in their estimate, the Applicant is requesting to extend operations to 2047. [Planning Commission 2024 Record, Exhibit 11, Finding of Fact 55, pg.12]
13. The Applicant proposes reshaping the permitted area approved for mining to better reflect available resources by adding 15.6 acres to the existing footprint along the northwestern and western rim of the quarry pit and removing the same acreage from the existing permitted SUP area along the northern and southwestern rim of the quarry pit. The reshaping of the resource extraction area would not change the size of the permitted area and would result in a net increase in linear distance of area reserved as a “buffer” from the surrounding community. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 56 and 58, pg.12]
14. Currently, the Applicant operates a ready-mix concrete batching plant on Parcel 82 of the quarry during the permitted hours of operation and a hot-mix asphalt plant on leased property at Campbell Industrial Park in Kalaeloa. Operating the ready-mix concrete batching plant in the quarry pit on Parcel 82 and relocating the hot-mix asphalt to the quarry, along with sales, maintenance, and the unloading of permitted recycle materials on a 24 hours a day, seven days a week (24/7) basis would allow the Applicant to better meet O’ahu’s demand for ready-mix concrete and hot-mix asphalt. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 62 and 63, pg.14]

15. Expanding the operating hours would eliminate the need to transport aggregate offsite for processing. This would lead to cost savings for the City and County and the State on road and highway paving work and public and private construction jobs. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 65, pgs.14-15]
16. The implementation of the final grading plan will mitigate the adjusted footprint of the quarry operations by matching the topography adjacent to the site and by eliminating the steep faces of the hillside within the quarry by replacing them with more gradual slopes matching those of Pu‘u Makakilo to provide a more consistent appearance. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 72, pg.17]
17. Renaturalization of the quarry site will consist of planting of native shrubs such as ma‘o, ‘iliahi, naio, ‘a‘ali ‘i, and pōhinahina, as well as a hydroseed mix composed of common bermuda, buffel grass, and annual rye on the finished slopes of the site. The renaturalization will integrate the slopes of the quarry into the surrounding hillside due to the similar vegetation. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 73, pg.17]
18. All stormwater will continue to be retained on-site. A Stormwater Pollution Prevention Plan was provided in the Application as Exhibit R-3, even though stormwater discharge from the quarry is not anticipated. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 84, pgs.20-21]
19. There have been no reported rockfall events associated with vibrations from drilling, blasting, or other quarry operations that have affected the surrounding residential

properties during the life of the quarry. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 85, pg. 21]

20. Exterior facility lighting will be shielded to reduce the potential for interactions of nocturnally flying seabirds with external lights or other structures. Impact on transitory 'ōpe'ape 'a can be mitigated by refraining from disturbing, removing or trimming woody plants greater than 15 feet tall during bat birthing and pup rearing season (June 1 through September 15) and not using barbed wire for fencing. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 98, pg. 25]
21. A Mobility Analysis Report, prepared by Fehr and Peers, was included in the Application as Exhibit N. Based on a multimodal evaluation of mobility effects from the project, no potential impacts to pedestrian facilities, bicycle facilities, and transit facilities are anticipated. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 102, pg. 26]
22. The Makakilo Quarry is not connected to the City's wastewater system. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 103, pg. 26]
23. Non-potable water is available to Parcel 74 and Parcel 82 via a water line from a well in the Upper Quarry. The well is designated State Well #3-2103-006 and the Applicant is allowed to extract 256,000 gallons per day or 7,680,000 per month. In 2022, the Applicant's monthly average water usage was 4,400,000 gallons. The water is used on Parcel 82 for dust control, concrete batching, and landscaping. Dust control is accomplished using water tank trucks, which spray water on the roadways, stockpiles,

and excavated areas. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 104, pg. 26]

24. The existing placement of the ready-mix concrete plant in the quarry has resulted in water usage of 25,480 gallons per month. Taking this current use into account, the Applicant expects that the plant's annual water usage will be 305,770 gallons. If the requested expansion of hours is approved, the Applicant anticipates that the concrete plant will be operated primarily at night instead of during the day, which would focus the plant's water usage to the evening hours and would not result in a net change in water usage. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 105, pgs. 26-27]
25. A Fire Protection and Control Plan was approved in 2010 and the Applicant actively maintains firebreaks in the "buffer area." A map showing existing firebreak roads is included in the Application as Exhibit 0. No impacts on Fire Protection services are anticipated. [Planning Commission 2024 Record, Exhibit 11, Findings of Fact 109, pg. 27]

CONCLUSIONS OF LAW

1. Subject to HRS§205-6, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. *See* HRS§205-6(a).
2. The Makakilo Quarry requires a special use permit for its operations.

3. Pursuant to HRS§205-6(d), special permits for land the area of which is greater than fifteen acres shall be subject to approval by the LUC.
4. 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 LUC.
5. Because the Applications seek a special use permit for land the area of which is greater than fifteen acres, the LUC has jurisdiction over this matter pursuant to HRS§205-6 and HAR§15-15-95.
6. Pursuant to HAR §15-15-95(c), the following guidelines have been established for purposes of determining whether a proposed use is "unusual and reasonable:"
 - a. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC.
 - b. The proposed use would not adversely affect surrounding property.
 - c. The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.
 - d. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
 - e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.
7. Within forty-five days after receipt of the complete record from the county planning commission, the LUC shall act to approve, approve with modification, or deny the petition. See HRS§205-6(e).

8. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the Applicant. See HRS §205-6(d).
9. The LUC is authorized to impose restrictive conditions in its approval of special use permits provided its decision to impose such a restriction is supported by substantial evidence in the record.³
10. Article XI, section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
11. Article XI, section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.
12. Article XII, section 7, of the Hawai'i State Constitution requires the LUC to protect Native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

³ *Dept. of Environmental Services v. Land Use Comm'n*, 127 Hawai'i 5, 13, 275 P.3d 809, 817 (2012).

13. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible.⁴

14. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians.⁵

15. HRS §205-1(c) authorizes the Commission to “adopt rules guiding its conduct[.]”

16. As defined in HAR §15-15-03,

“Proceeding” means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:

- (1) Petitions for district boundary amendment;
- (2) Petitions for special permit;
- (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
- (4) Petitions for declaratory orders under section 91-8, HRS;
- (5) An investigation or review instituted or requested to be initiated by the commission; and
- (6) All other matters in the administration of chapter 205, HRS.

17. Pursuant to HAR §15-15-70(a), any party may make a motion before, during, or after the close of hearing.

⁴ Public Access Shoreline Hawai‘i v. Hawai‘i County Planning Commission, 79 Hawai‘i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).

⁵ Ka Pa‘akai O Ka ‘Aina v. Land Use Commission, 94 Hawai‘i 31, 7 P.3d 1068 (2000).

18. Pursuant to HAR §15-15-94(a), if a petitioner desires to have a modification or deletion of a condition that was imposed by the Commission, or modification of the Commission's order, the petitioner 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.
19. The courts have recognized that an agency, acting as factfinder, has the discretion to determine the credibility of a witness and weigh the evidence before it.⁶
20. HRS §91-10(5) provides "Except as otherwise provided by law, 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."
21. HAR §15-15-59(a), provides that "...Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion."
22. Pursuant to HAR §15-15-94(b), for good cause shown, the Commission may act to modify or delete any of the conditions imposed or modify the Commission's order.
23. Pursuant to HAR §15-15-91, conditions imposed by the commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer.
24. The Commission concurs with the Planning Commission that the proposed use would not be contrary to the objectives sought to be accomplished by the state land use law and

⁶ *Nakamura v. State*, 98 Hawai'i 263, 270, 47 P.3d 730, 737 (2002).

regulations. [Planning Commission 2024 Record, Exhibit 11, Conclusion of Law No. 6, pg. 31]

25. The Commission concurs with the Planning Commission that the desired use would not adversely affect surrounding properties and determined that the proposed Project, with mitigative conditions in place, would not adversely affect surrounding property.

[Planning Commission 2024 Record, Exhibit 11, Conclusion of Law No. 7, pg. 32]

26. The Commission concurs with the Planning Commission's that the proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. [Planning Commission

2024 Record, Exhibit 11, Conclusion of Law No. 8, pg. 32]

27. The Commission concurs with the Planning Commission that unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.

[Planning Commission 2024 Record, Exhibit 11, Conclusion of Law No. 9, pg. 33]

28. The Commission concurs with the Planning Commission that the land on which the proposed use is sought is unsuited for the uses permitted within the district. Expansion of the excavation area further up Pu'u Makakilo would not have an adverse impact on the agricultural industry as the Project site and expansion area's soils have poor crop

productivity ratings. [Planning Commission 2024 Record, Exhibit 11, Conclusion of Law No. 10, pgs. 33-34]

29. The Commission concurs with the Planning Commission that the amendments to the Special Permit sought by the Applicant are “unusual and reasonable. [Planning Commission 2024 Record, pg. 34]
30. Based upon the record and files herein and the findings set forth above, the LUC concludes that there is substantial evidence in the record to support the conditions imposed below.
31. Based upon the record and files herein and the findings set forth above, the LUC further concludes that the conditions imposed below are necessary or appropriate to protect public health, safety, and welfare, and are material to the LUC's approval.
32. Based upon the record and files herein and the findings set forth below, the LUC further concludes that the conditions imposed below are necessary or appropriate in granting the approval, including but not limited to, ensuring the adherence to representations made by the Applicant.
33. The conditions imposed in this Decision and Order are necessary or appropriate in granting the approval, including but not limited to, ensuring the adherence to representations made by the Applicant, and curtailing adverse impacts on surrounding properties.

DECISION AND ORDER

The LUC, having duly considered the written and oral arguments presented by the Applicant, the City and County Department of Planning and Permitting, the Office of Planning and Sustainable Development, and members of the public, and pursuant to a motion having been made and seconded at the meeting on August 21, 2024, held at the Filipino Community Center,

Flores Ballroom, 94-428 Mokuola Street, Waipahu, HI 96797, there being a vote total 7 ayes in favor of the motion and 0 nays; one recused and one excused, hereby GRANTS the petition with conditions.

Furthermore, pursuant to HRS Chapter 205 and the Commission Rules under HAR chapter 15-15, upon consideration of the Commission decision-making criteria under HRS §205-6 and HAR §15-15-95(c) and based upon the preponderance of the evidence and good cause shown, the Commission determines and concludes that the Motion being requested by the Applicant is reasonable.

HEREBY ORDERS that Petitioner's motion to amend the Land Use Commission's Decision and Order dated November 7, 2008, be APPROVED, existing conditions are amended to read as follows:

1. Within six (6) months of the Land Use Commission's Decision and Order approving the Special Use Permit, the Applicant shall submit:
 - a. A new site plan with metes and bounds map and description delineating the approximately 536.9-acre Property, including the boundaries of the quarry excavation and berming areas, the processing site and conveyor tunnel, and the buffer area to the Director of Planning and Permitting for review and approval.

The site plan shall also be submitted to the Land Use Commission.
2. 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 a revised final Closure Grading Plan, showing a visual model of quarry activity in five-

- year stages from all five approaches to the Quarry. The revised grading plan should provide cross-sections of the pit displaying slopes and elevations. The grading plan should also show landscaping details including plant types, sizing and spacing, irrigation facilities, and distribution systems.
3. All resource extraction, related aggregate processing and concrete and asphalt production activities, including recycling activities shall cease by December 31, 2047. Final beneficial re-use plans as approved by the DPP shall be implemented immediately upon the cessation of said resource extraction and related quarrying activities.
 5. Beginning January 1, 2012, quarry operations shall be limited to the following days/hours:
 - a. Quarry excavation, crushing, stockpiling, and recycling facility- 6:00 a.m. to 6:00 p.m., Monday to Saturday.
 - b. Operation of ready-mix concrete and hot-mix asphalt plants, receiving recycled materials, equipment maintenance, and sales 24 hours a day, 7 days a week.
 9. On each anniversary date of the Land Use Commission's Decision and Order, the Applicant or its successor shall file with the Department of Planning and Permitting and the Land Use Commission a report and supporting documentation demonstrating the status of compliance with each of the conditions of the Special Use Permit approval. The Applicant will report in-person to the City and County of Honolulu Planning Commission quarterly during the first year, annually during the second and

third year, and annually thereafter if requested by the Planning Commission. The following items shall also be a part of the supporting documentation:

- a. Observations of fugitive dust, night-time operations of lighting, noise, and odors.
- b. A report on replanting activities, including the areas replanted, and the type of vegetation planted.
- c. A report of any citizen's complaints relating to the operation along with the actions taken to ameliorate those complaints.
- d. An updated rectified aerial imagery of the quarry, buffer area and processing site and dust control management plan.

The Director may present its analysis and recommendations on the annual report to the Planning Commission and the State Department of Health for further action pursuant to the Rules of the Planning Commission.

15. The uses in the quarry excavation area shall be limited to rock excavation, crushing, stockpiling, a new hot-mix asphalt plant, and a ready-mix concrete batching plant, recycling of concrete rubble, glass, and asphaltic concrete pavement, equipment maintenance, employee support, parking, administration, and a water well and pump.

No other uses shall be permitted without the approval of the Land Use Commission.

IT IS FURTHER ORDERED that the Special Use Permit shall be subject to the following new conditions:

16. The Applicant shall submit for review and approval from the Director of the DPP, an outdoor lighting plan showing all existing and proposed outdoor lighting fixtures and

their correlated color temperature being at or below 3000 Kelvin. The portable generator lighting systems are to be located on the southern side of each work area so floodlights will only be pointed towards berms or walls in the north, east, and west direction, away from Kapolei. The outdoor lighting plan shall also include a photometric plan showing that the spread of light from the exterior lighting in the quarry is fully shielded to prevent glare and light spillage onto surrounding lots and public rights-of-way. Lighting for nighttime operations shall be directed away from adjoining residential uses and be turned off upon completion. The outdoor lighting plan shall apply that nighttime lighting, when not in use, shall be turned off.

17. The Applicant shall take sufficient measures to protect ‘ōpe‘ape‘a that include refraining from disturbing, removing or trimming woody plants greater than 15 feet tall during bat birthing and pup rearing season (June 1 through September 15) and not using barbed wire for fencing.
18. The Applicant shall submit a traffic circulation plan for review and approval by the Director of the DPP to ensure that all truck loading and truck circulation in the quarry pit and throughout the quarry operational area need not reverse, thereby triggering their safety alarms during nighttime (dusk to dawn) operations. Trucks with safety alarms will be outfitted with the “white noise” sounding alarms.
19. Prior to conducting quarry excavations in the proposed excavation expansion area, the Applicant shall submit written correspondence to the DPP that an archaeological inventory survey (“AIS”) has been accepted in writing by the State Historic Preservation Division (“SHPD”) which indicates that the quarry excavation process in

the proposed excavation expansion area may proceed. The Applicant shall implement the approved mitigation protocols identified in the AIS as well as comply with all relevant provisions of the Hawai‘i Revised Statutes, Hawai‘i Administrative Rules, and other laws applicable to historic properties, including burials, identified within the proposed excavation expansion area.

20. Applicant shall comply with all relevant provisions of the Hawai‘i Revised Statutes, Hawai‘i Administrative Rules, and other laws applicable to historic properties, including burials, identified within the proposed excavation expansion area. Include dissemination of information to community members regarding other required environmental testing (and their results) in normal due diligence within the proposed expansion area as they relate to identified historic properties for the proposed expansion and planned changes to operations during annual reports and Planning Commission presentations pursuant to Condition No. 9 above. The Applicant shall continue community consultation regarding potential impacts and mitigation plans for any identified historic properties throughout the duration of the Project and convey information about impacts to any identified historic properties in annual reports and Planning Commission presentations pursuant to Condition No. 9 above.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER on _____. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this day of _____, per motion on August 21, 2024.

APPROVED AS TO FORM

LAND USE COMMISSION

STATE OF HAWAI'I

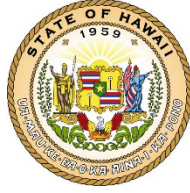
Miranda C. Steed, Esq.
Deputy Attorney General

By _____
DAN GIOVANNI
Chairperson and Commissioner

Filed and effective on:

Certified by:

DANIEL E. ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of) DOCKET NO. SP73-147
GRACE PACIFIC CORPORATION)
To Amend the Special Permit To (1) Extend) FINDINGS OF FACT, CONCLUSIONS OF
the Life of Quarry to 2047, (2) Reshape) LAW, DECISION AND ORDER,
Permitted Mining Area, (3) Expand Hours of) APPROVING MOTION TO AMEND
Operation, and (4) Permit a Ready-Mix) AND CERTIFICATE OF SERVICE
Concrete Plant in Quarry Pit at Pu'u)
Makakilo, 'Ewa, O'ahu, Hawai'i, Tax Map)
Key Nos.: 9-1-16: 004 and 9-2-03:074 (por.))
and 082 (por.))
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER APPROVING MOTION TO AMEND was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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CERTIFIED DAWN TAKEUCHI-APUNA, Director
DEL.: Department of Planning and Permitting
City and County of Honolulu
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Dated _____
Honolulu, Hawai'i.

DANIEL E. ORODENKER
Executive Officer