

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. SP77-271
)
AMERON HC&D) DECISION AND ORDER APPROVING A
) FIFTH AMENDMENT TO THE LAND
To Obtain A Fifth Amendment To) USE COMMISSION SPECIAL USE
Land Use Commission Special Use) PERMIT
Permit To Amend Condition Number 2)
Of The Decision And Order Approving)
The Fourth Amendment To The Land)
Use Commission Special Use Permit)
That Established Quarry Operations)
On Approximately 199.4 Acres Of)
Land Within The State Land Use)
Agricultural District At Pu`unēnē,)
Maui, State Of Hawai`i, Tax Map Key:)
3-8-03: Por. 4 And Por. 21 (Formerly)
Tax Map Key: 3-8-01: Por. 1 Included))
_____)

DECISION AND ORDER APPROVING A FIFTH AMENDMENT TO THE LAND USE
COMMISSION SPECIAL USE PERMIT

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

JAN 28 2008

Date

by *Rodney G. Mount*

Interim Executive Officer

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DECISION AND ORDER APPROVING A FIFTH AMENDMENT TO THE LAND USE
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On March 9, 2007, Michael T. Munekiyo of Munekiyo & Hiraga, Inc., filed a written request on behalf of Ameron HC&D ("Petitioner") with the County of Maui Department of Planning to amend Condition Number 2 of the Decision And Order Approving The Fourth Amendment To The Land Use Commission Special Use Permit ("Decision And Order") dated April 10, 2002, issued in the above-entitled docket ("Request"), pursuant to section 205-6, Hawai`i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai`i Administrative Rules ("HAR"). Petitioner requested a

10-year time extension to allow for the continued operation of Petitioner's quarry operations.

The Land Use Commission ("LUC") has jurisdiction over Petitioner's Request. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize the LUC to approve special use permits and amendments thereto for areas greater than 15 acres.

On July 24, 2007, the County of Maui Planning Commission ("Planning Commission") conducted a hearing on Petitioner's Request. There was no public testimony provided on the Request. After due deliberation, the Planning Commission recommended approval of Petitioner's Request to the LUC.¹

On August 29, 2007, the LUC received a copy of the decision and a portion of the record of the Planning Commission's proceedings on Petitioner's Request. On October 31 and November 26, 2007, the LUC received the remaining portions of the record.

On December 13, 2007, the LUC met in Honolulu, Hawai'i, to consider Petitioner's Request. Michael T. Munekiyo and Eric Yoshizawa appeared on behalf of Petitioner. Madelyn D'Enbeau, Esq., and Robyn Loudermilk appeared on behalf of the

¹ At the hearing, an issue was raised as to whether the material that is quarried by Petitioner is considered a mineral, and therefore entitles the State of Hawai'i to collect royalties from its extraction. As a result, the Planning Commission recommended to the LUC that it "...verify that appropriate royalties for the extraction of minerals, if any, have been applied."

County of Maui. Bryan C. Yee, Esq., was also present on behalf of the State Office of Planning.

At the meeting, Petitioner noted that the subject property had rock reserves of approximately 12 to 15 years. Petitioner also noted that there remains a continuing need for the quarry within the community to provide concrete products and aggregate for construction and other local uses.²

Following discussion, a motion was made and seconded to approve Petitioner's Request to amend Condition Number 2 of the Decision And Order dated April 10, 2002, as follows:

2. That the State Land Use Commission Special Use Permit shall be valid until August 5, 2017, subject to extension by the Maui Planning Commission upon a timely request for extension filed at least ninety (90) days prior to its expiration. The Commission may require a public hearing on the time extension.

Following deliberation by the Commissioners, a vote was taken on the motion. There being a vote tally of 7 ayes and 2 absent, the motion carried.

ORDER

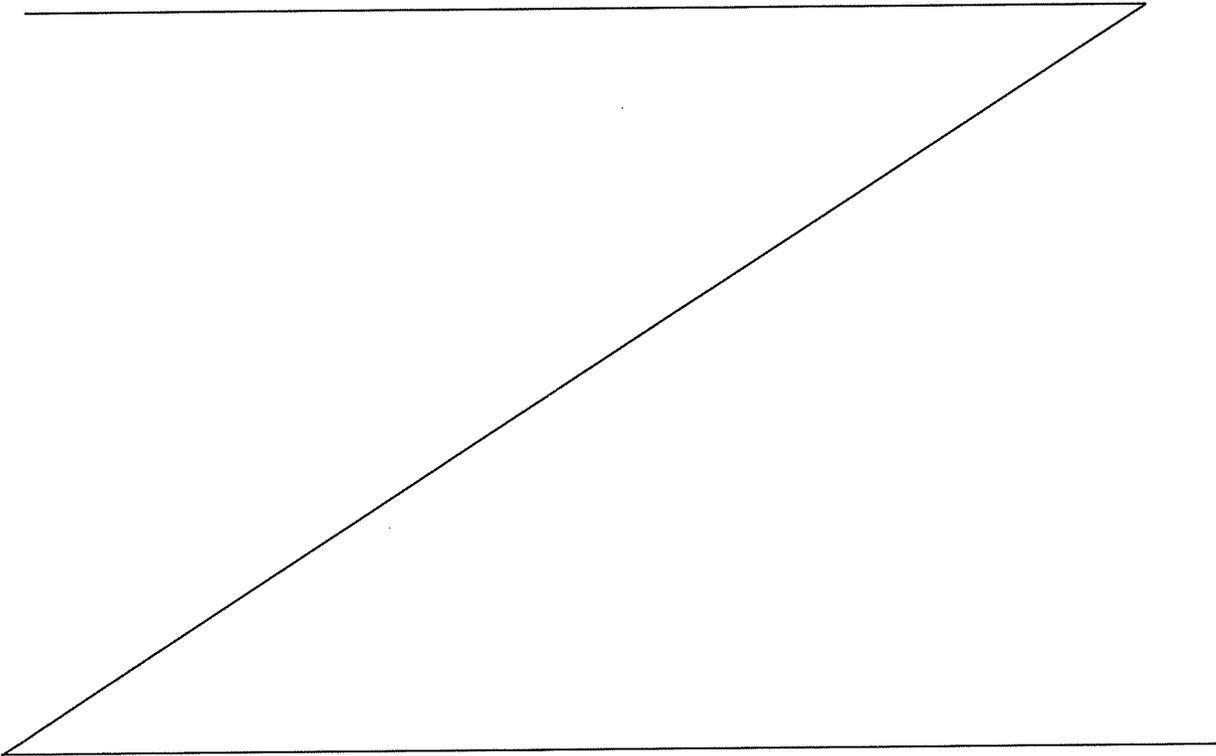
Having duly considered the complete record of Petitioner's Request and the oral arguments presented by the parties present in the proceeding, and a motion

² In response to the Planning Commission's recommendation, the LUC staff noted that it had received correspondence from the State Department of Land and Natural Resources which affirmed the State of Hawai'i's succession to the title and ownership interests of the Hawaiian government in and to the mineral rights on the subject property. Staff also clarified that section 182-1, HRS, specifically exempts rock that is used in general construction from the definition of *minerals*.

having been made at a meeting on December 13, 2007, in Honolulu, Hawai`i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, the LUC hereby APPROVES Petitioner's Request, subject to the following amendment to Condition Number 2 of the Decision and Order dated April 10, 2002:

- 2. That the LUC Special Use Permit shall be valid until August 5, 2017, subject to extension by the Maui Planning Commission upon a timely request for extension filed at least ninety (90) days prior to its expiration. The Commission may require a public hearing on the time extension.

All other conditions to the Decision and Order dated April 10, 2002, are hereby reaffirmed and shall continue in effect.



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 28th day of January, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 28th day of January, 2008, per motion on December 13, 2007.

APPROVED AS TO FORM

Diane Jackson
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By Duane Kanuha
DUANE KANUHA
Presiding Officer

Filed and effective on
JAN 28 2008

Certified by:

Rodney G. Smith
Interim Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. SP77-271
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AMERON HC&D) CERTIFICATE OF SERVICE
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To Obtain A Fifth Amendment To)
Land Use Commission Special Use)
Permit To Amend Condition Number 2)
Of The Decision And Order Approving)
The Fourth Amendment To The Land)
Use Commission Special Use Permit)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order Approving A Fifth Amendment To The Land Use Commission Special Use Permit 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:

DEL. MARY LOU KOBAYASHI, Acting Director
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P. O. Box 2359
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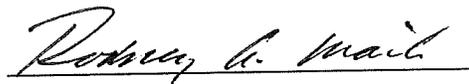
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CERT. MICHAEL MUNEKIYO
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395 High Street, Suite 104
Wailuku, Hawai'i 96793

Dated: Honolulu, Hawaii, JAN 28 2008.



RODNEY A. MAILE
Interim Executive Officer