

ORIGINAL

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII

2002 APR 10 A 10: 52

In the Matter of the Petition of)	DOCKET NO. SP77-271
)	
AMERON HC&D)	DECISION AND ORDER
)	APPROVING THE FOURTH
To Obtain a Fourth Amendment of Land)	AMENDMENT TO THE LAND
Use Commission Special Use Permit To)	USE COMMISSION SPECIAL USE
Add Approximately 38.5 Acres Within the)	PERMIT
State Land Use Agricultural District For)	
The Quarry Operations and To Delete)	
Condition No. 13 and To Modify Condition)	
No. 15 at Puunene, Maui, State of Hawai`i,)	
TMK Nos: 3-8-003:portion of 004 and)	
portion of 021 (formerly 3-8-001:portion of)	
001 included))	

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.

4/10/02 by Anthony Arching
Date Executive Officer

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

On January 5, 2001, Ameron Hawaii ("Applicant" or "Ameron") filed a Special Use Permit Application ("Application") with the County of Maui Department of Planning ("Planning Department") pursuant to Section 205-6, Hawaii Revised Statutes ("HRS") and Sections 15-15-95 and 15-15-96 of the Hawaii Administrative Rules ("HAR"). The Applicant requests a fourth amendment to LUC Docket No. SP77-271/Ameron HC&D, including the addition of 38.5 acres for future quarrying activities; the amendment of Condition No. 2, and deletion of Condition Nos. 13 and 15. The "Permit Area" is located at Puunene, Maui, Hawai`i, and identified as TMK

Nos: 3-8-003: portion of 004 and portion of 021, formerly 3-8-001:portion of 001 included. The Permit Area consists of two areas, Areas A and C, totaling approximately 166.6 acres. The landowner of the Permit Area is Alexander and Baldwin.

In the Fourth Amendment, the Applicant sought to clarify the acreage of the Permit Area, which included: acreage adjustments to the existing Area A; and addition of 38.5 acres from newly created Area E for continuous quarrying activities of adjacent lands.

In addition, the Applicant requested to delete Condition No. 15 of the Findings of Fact, Conclusions of Law, and Decision and Order issued on August 5, 1997 by the State Land Use Commission ("LUC" or "Commission"), that required the filing of a metes and bounds map and description depicting the proper acreage of the Permit Area. The Applicant also requested the deletion of Condition No. 13, which required the Applicant to obtain a County Use Variance for the operation of the quarry in the Interim Zoning District.

Regarding the deletion of Condition No. 15, the Applicant stated that it could not practically maintain survey pins in the Permit Area because of on-going sugarcane cultivation of Hawaii Commercial and Sugar Company ("HC&S") simultaneous with Ameron quarrying activities. The HC&S, through agreements with the Applicant, cultivates in areas included in the Permit Area mined by Ameron. The cultivation involves a two-year harvest cycling pattern that would result in the biennial removal of any field stakings. As an alternative, the Applicant proposed to file an aerial

photo of the area with delineation of the respective quarry areas and adjacent County landfill areas.

The Fourth Amendment also requested the deletion of Condition No. 13, requiring the Applicant to obtain a County Use Variance for the operation of the quarry in the Interim Zoning District. The Applicant stated that this condition was made moot by Ordinance No. 2749 (Chapter 19.30A, Maui County Code), which zoned the Permit Area to Agricultural. The operation of a quarry in the Agricultural District does not require that a County Use Variance be secured.

On June 26, 2001, the County of Maui Planning Commission ("Planning Commission") held a hearing on the Fourth Amendment. The Planning Commission received testimony from Michael T. Munekiyo, AICP, Munekiyo & Hiraga Inc., on behalf of the Applicant. There were no public witnesses. At its meeting, the Planning Commission voted to approve the Fourth Amendment to the LUC with the following recommendations:

1. Reduction of the Permit Area east of the Central Maui Landfill from 134.8 to 125.4 acres;¹
2. Deletion of Condition No. 13;
3. Modification of Condition No. 15 to delete the requirement for a metes and bounds description as follows:

¹ Upon consultation with LUC staff, subsequent to the County approval of the Fourth Amendment, the Applicant adjusted the boundary and acreage to Area A in the Permit Area to exclude the traversing portion of Kalialinui Gulch resulting in an acreage adjustment from 125.4 acres to 119.7 acres.

Applicant shall clarify the entire acreage that is the subject of LUC Docket No. SP77-271 with the Maui Planning Commission and the LUC by filing an aerial photographic map with overlay and a site map clearly depicting the proper acreage of SP77-271.

4. Approval of the additional 38.5 acres for the quarrying operations subject to the current conditions of approval for SP77-271 and subject to the following new condition no. 13:

13. That the applicant shall incorporate improvements to the access to Haleakala Highway, with and without the proposed four lane widening improvements, as reviewed and approved by the Department of Transportation.

On August 28, 2001, the Planning Department filed additional materials of the record, and on September 17, 2001, the LUC received the transcripts of the Planning Commission's meeting on June 26, 2001, and deemed the record complete.

The Commission has jurisdiction over the Application. Section 205-6, HRS, and Sections 15-15-95 and 15-15-96, HAR, authorizes the Commission to approve special permits for areas greater than 15 acres where application for Commission approval is made within 60 days after the decision is rendered on the application to the Planning Commission.

On October 18, 2001, the Commission held a hearing on SP77-271 at its meeting in Honolulu, Hawai'i. Michael Munekiyo appeared on behalf of the Applicant. Brian Moto and Colleen Suyama appeared on behalf of the Planning Department. There was no public witness testimony.

Staff described the Permit Area consisted of Area A, comprising of approximately 119.7 acres; Area C, comprising of approximately 41.2 acres; and the proposed Area E, comprising of approximately 38.5 acres. Certain areas in the Permit Area have been involved with the interaction between HC&S' sugar cultivation, Ameron's quarrying activities, and County landfilling needs. The Applicant explained that areas that have been mined have either been reclaimed by introduction of previously excavated fill and returned back to HC&S for agricultural cultivation or kept open and utilized by the County for the Central Maui Landfill operated by the Department of Public Works, County of Maui. The Commission inquired about the post-mining uses of the proposed Area E, upon which the Applicant replied it was not certain if it will be reclaimed or landfilled with the ultimate decision residing with HC&S.

The Commission inquired of the Planning Department if a district boundary reclassification for the project may be more appropriate. The Planning Department responded that the special permit process was more appropriate because a time limit was imposed; there was the ability to amend conditions of the special permit

and respond to changing land use patterns affecting the Permit Area; and urban reclassification may spur the development of undesirable heavy industrial activities.

Conformance with the Special Use Permit Criteria

The Commission found that based upon information in the record of the Planning Commission's decision, the proposed use of continued quarrying activities has met the special use permit criteria pursuant to Section 15-15-95 (b), HAR.

1. The Commission found that while the proposed addition of Area C to the Permit Area would affect Prime agricultural lands, the action will not ultimately displace nor diminish the agricultural potential of the land based on the following reasons: i) The removal of cultivated lands for quarrying activities is coordinated with the operation and activities of the HC&S plantation; ii) Any Prime agricultural lands removed by quarrying activities may be reclaimed and returned for future agricultural use; and iii) The Applicant's lease agreement with HC&S requires the reclamation of such lands by HC&S.

2. The Commission further found that given the previous and existing agricultural use of the Property by HC&S, and the lack of any supporting evidence in previously submitted materials to the Commission identifying native Hawaiian cultural resources, access and/or gathering rights issues in the area, the proposed use appears to have "no effect" in this regard.

3. The proposed use would not create unreasonable burden upon public agencies to provide roads, streets, sewers, water or drainage facilities; police, fire protection, and the school systems.

4. The Applicant is working with the Department of Transportation, State of Hawaii to identify and address traffic congestion issues, operational and safety measures to accommodate safe access of project vehicles onto the Haleakala Highway.

5. The proposed use would not adversely affect the activities of the surrounding properties used by HC&S and the County.

6. The Applicant has been notified by the Department of Health, State of Hawaii, of requirements for securing a National Pollutant Discharge Elimination System general permit for surface runoff into Class A or II waters; and measures to control fugitive dust generated during quarrying activities.

7. By reason of the foregoing, the proposed use is not contrary to the objectives of Chapters 205 and 205A and the rules of the Commission.

Following discussion by the Commissioners, a motion to approve the Fourth Amendment with conditions was made and seconded by the LUC. There being a vote tally of eight ayes and zero nays, the motion carried.

DECISION AND ORDER

Having duly considered the complete record of the Application and the oral arguments presented by the parties in the proceeding, and a motion having been made at a hearing conducted on October 18, 2001, in Honolulu, Hawaii, and the motion having received the affirmative votes required by Section 15-15-13, HAR, and there being good cause for the motion, the Commission hereby APPROVES the Fourth Amendment granted by the Planning Commission with conditions on approximately 199.4 acres of land within the State Land Use Agricultural District at Puunene, Maui, Hawaii, identified as TMK Nos:3-8-003: portion of 004 and portion of 021 (formerly TMK No: 3-8-001:portion of 001 included) and approximately identified on Exhibit "A," attached hereto and incorporated by reference herein, subject to the following conditions:

1. The Property shall be used for the establishment and operation of an expansion to the current quarry located east of the Property. No other use shall be permitted. If another use is proposed for the Property, the Applicant or landowner shall timely file a motion or petition for Special Permit with the Maui Planning Commission to allow such other use.

2. This amendment to the Land Use Commission Special Permit under LUC Docket No. SP77-271, shall be valid for a period of ten (10) years from the date of the Land Use Commission's decision and order issued on August 5, 1997 for the Third Amendment of the Application, subject to further extensions by the Maui

Planning Commission and the State Land Use Commission upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The Maui Planning Commission shall make a recommendation to the State Land Use Commission and may require a public hearing on the time extension.

3. The conditions imposed herein shall be self enforcing and, accordingly, upon due notice by the Planning Department to the permit holder and the Land Use Commission that there has been a prima facie evidence that a breach has occurred the permit shall be automatically suspended pending a prompt hearing on the continuation of such Land Use Commission Special Permit, provided that written request for such a hearing is filed with the Maui Planning Commission within ten (10) working days of the date of such notice of alleged breach. If no request for hearing is filed within the ten (10) working day period, the Maui Planning Commission may recommend the revocation of said Land Use Commission Special Permit. The Maui Planning Commission's recommendation shall be promptly transmitted to the State Land Use Commission for appropriate action.

4. The subject State Land Use Commission Special Permit shall not be transferred without the prior written approval of the Land Use Commission. In this regard, the Maui Planning Commission shall make a recommendation to the Land Use Commission. However, in the event that a contested case hearing preceded issuance of said Land Use Commission Special Permit, a public hearing shall be held by the Maui

Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

5. Applicant, its successors or permitted assigns, shall exercise due care as to third parties with respect to all areas affected by subject Land Use Commission Special Permit and shall defend, indemnify and hold the County of Maui and State of Hawaii harmless from and against any loss, liability, claim or demand arising out of this permit.

6. Applicant, its successors or permitted assigns, shall fully comply with all applicable governmental requirements.

7. Applicant, its successors or permitted assigns, shall timely provide without any prior notice, annual reports to the Land Use Commission and the County of Maui Planning Department in connection with the status of the subject project and Applicant's progress in complying with the conditions imposed herein. The annual report shall also include the amount of resources mined from the Property and the projected amount of resource remaining at the time of submission of each annual report. The annual report shall be submitted in a form prescribed by the Executive Officer of the Land Use Commission.

8. Applicant, its successors or permitted assigns, shall begin construction of the quarry expansion within 6 months from issuance of the Land Use Commission's decision and order. Construction shall include any improvements necessary to operate the quarry pursuant to all applicable laws and regulations.

9. Applicant, its successors or permitted assigns, shall take appropriate mitigative measures to minimize erosion, and prevent cement products, oil, fuel, and other toxic substances associated with the use of heavy machinery from spilling or leaching into the ground.

10. Applicant, its successors or permitted assigns, shall provide adequate dust control measures during all phases of quarry operations in accordance with the provisions of Chapter 11-60.1, Hawaii Administrative Rules, Section 11-60.1-33 on Fugitive Dust.

11. Applicant, its successors or permitted assigns, shall utilize non-potable water, to the extent possible, for grading and dust control of the quarry.

12. Applicant, its successors or permitted assigns, shall immediately stop work and contact the State Historic Preservation Division, Department of Land and Natural Resources should any previously unidentified archaeological resources such as artifacts, shell, bone, charcoal deposits, human burial, rock or coral alignments, pavings or wall be encountered during development of the Special Permit area.

13. That the Applicant, its successors or permitted assigns, shall incorporate improvements to the access to Haleakala Highway, with and without the proposed four lane widening improvements, as reviewed and approved by the Department of Transportation.

14. Applicant, its successors or permitted assigns, shall plant and maintain a windbreak belt, along with landscaping plants, along Pulehu Road. The plantings shall be installed concurrently as quarrying operations progress through Phase V and Phase VI as illustrated in Exhibit 3 of the February 25, 1997 Planning Department Report.

15. Applicant, its successors or permitted assigns, shall clarify the entire acreage that is subject of LUC Docket No. SP77-271 with the Maui Planning Commission and the State Land Use Commission by filing an aerial photographic map with overlay and a site map clearly depicting the proper acreage of SP77-271. If any parcel within the Permit Area is sold or transferred to any other person or entity, the Applicant shall provide a metes and bounds survey as approved by the Executive Officer.

Dated: Honolulu, Hawai'i, April 10, 2002

LAND USE COMMISSION
STATE OF HAWAII


By MERLE A.K. KELAI
Chairperson and Commissioner

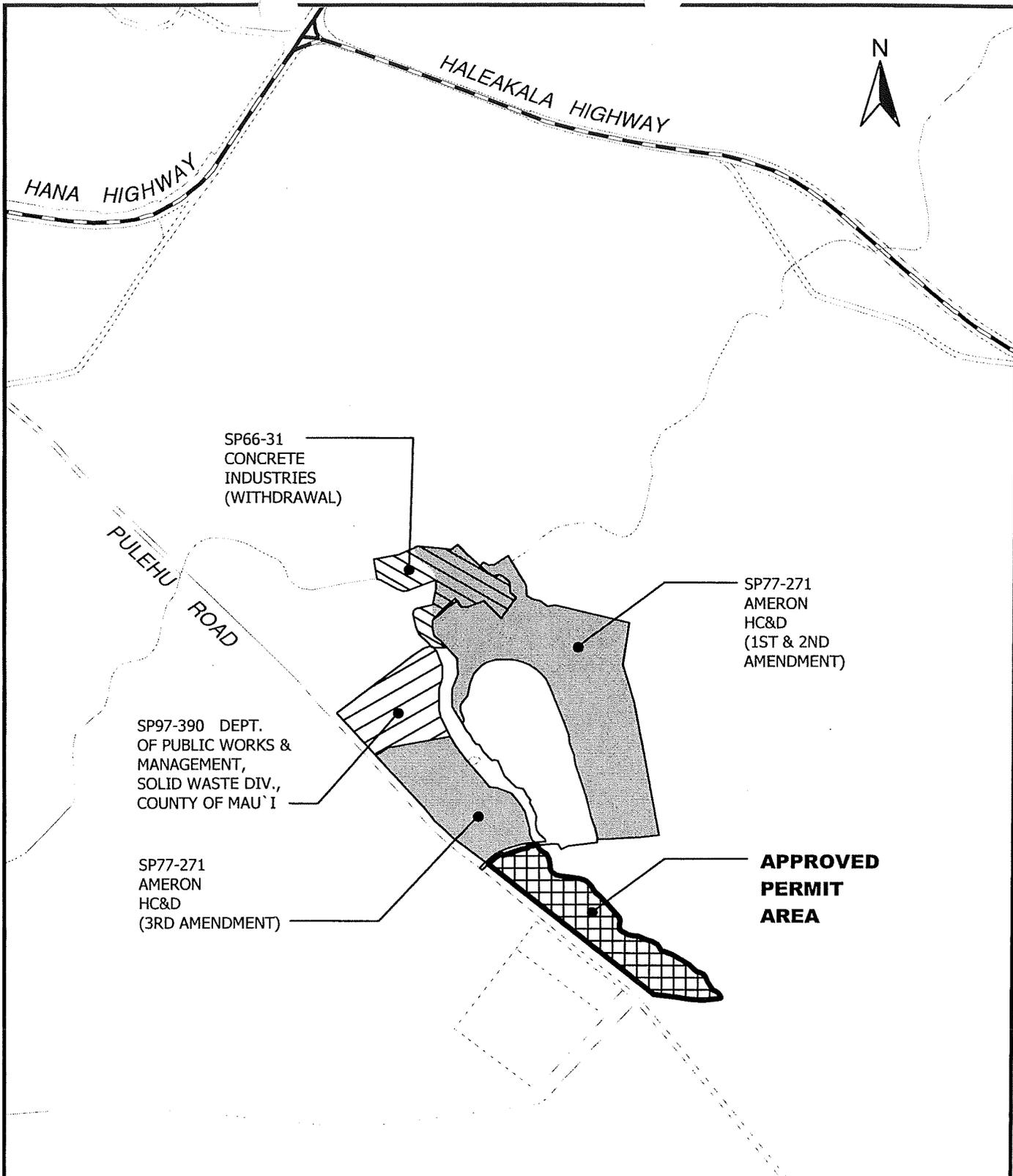
APPROVED AS TO FORM:

Diana Quisenberry
Deputy Attorney General

Filed and effective on
April 10, 2002

Certified by:

Anthony J. Ching
Executive Officer



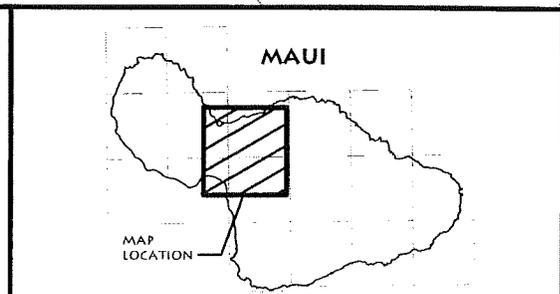
SP77-271 AMERON HC&D

LOCATION MAP

TAX MAP KEY: 3-8-03: por. 4
 WAILUKU, MAUI, HAWAI'I

SCALE: 1" = 2,000 ft.

EXHIBIT "A"



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

In the Matter of the Petition of)	DOCKET NO. SP77-271
)	
AMERON HC&D)	CERTIFICATE OF SERVICE
)	
To Obtain a Fourth Amendment of Land)	
Use Commission Special Use Permit to Add)	
Approximately 38.5 Acres Within the State)	
Land Use Agricultural District for the)	
Quarry Operations and to Delete Condition)	
No. 13 and to Modify Condition No. 15 at)	
Puunene, Maui, State of Hawai'i,)	
TMK Nos: 3-8-003:portion of 004 and)	
portion of 021 (formerly 3-8-001:portion of)	
001 included))	
_____)	

CERTIFICATE OF SERVICE

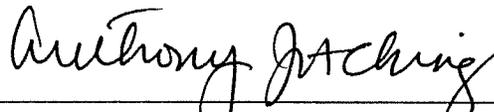
I hereby certify that a copy of the Decision and Order Approving the Fourth Amendment to the Land Use Commission Special Use Permit was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. JOHN E. MIN, Director of Planning
 Department of Planning
 County of Maui
 250 South High Street
 Wailuku, Hawaii 96793

CERT. MIKE MUNEKIYO
Munekiyo & Hiraga, Inc.
395 High Street, Suite 104
Wailuku, Hawaii 96793

CERT. JAMES B. TAKAYESU, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 10th day of April, 2002.



ANTHONY J. H. CHING
Executive Officer