

April 8, 2019

Daniel Orodenker, Executive Director
State of Hawai'i
Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

DEPT. OF PLANNING
COUNTY OF MAUI

APR - 9 2019

RECEIVED

SUBJECT: State Land Use Commission Special Use Permit for Hawaiian Cement Pohakea Quarry, TMK 3-6-004:007(por.); SUP1 2006/0001

Dear Mr. Orodenker:

In December 2006, the State Land Use Commission (LUC) approved a Special Use Permit (SUP) for the expansion of an existing rock quarry and base course operation at Pohakea Quarry, subject to 23 conditions. On January 7, 2011, the LUC approved a time extension request for the above-mentioned SUP. The SUP time extension was granted until December 15, 2019.

Condition Number 6 was amended with the 2011 SUP time extension approval and now states:

On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

On behalf of the SUP holder, Hawaiian Cement, we are submitting this compliance report to meet Condition Number 6 and address compliance with the conditions set forth in the approved SUP. A copy of the 2011 time extension request approval is provided as **Exhibit "A"**.

It was recently determined that annual compliance reports were not filed for said permit in years 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019. We apologize for this oversight and incorporated steps to ensure that in the future annual reports will be filed on a regular basis. Hawaiian Cement has been and continues to be in compliance with all conditions since the granting of the permit approvals. Additionally, we note that the Pohakea Quarry is covered by two (2) additional approvals by the County of Maui, a

County Special Use Permit (CUP) and a Conditional Permit (CP). Both County permits also include regular reporting requirements (CUP – biannual report and CP – annual report), which have been filed with the County of Maui, Department of Planning. The CUP and CP conditions are similar in nature to the SUP conditions. A copy of the last CUP and CP compliance reports are attached for reference as **Exhibit “B”** and **Exhibit “B-1”**. In the future, we would like to coordinate with the LUC Staff to see if a single compliance report for the Pohakea Quarry, including all conditions of the SUP, CUP and CP can be included and submitted to both the LUC and the Department of Planning.

Condition No. 1

That the LUC Special Use Permit shall be valid until December 15, 2019, subject to further extensions by the LUC upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the LUC and may require a public hearing on the time extension.

Response: The permittee concurs with the condition and will comply with time extension request procedures. We note that as the permit expires in December 2019, an Application to Amend Permit Terms, Conditions, and Time Stipulations requesting a time extension is being prepared and will be filed with the County of Maui, Department of Planning.

Condition No. 2

That the conditions of this State Special Use Permit shall be enforced pursuant to sections 205-12 and 205-13, HRS. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty days to cure the violation. If the permit holder fails to cure the violation within sixty days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000 per violation; that a civil fine not to exceed \$5,000 shall be issued if violation not cured within six months of the issuance of the order. The order shall become final thirty days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the DP within said thirty days. Upon receipt of a request for a hearing, the DP shall specify a time and place for the permit holder to

appear and be heard. The hearing shall be conducted by the planning director or the director's designee in accordance with the provisions of chapter 91, HRS, as amended.

Response: The permittee concurs with the condition and submits this report to address compliance with all conditions of the SUP.

Condition No. 3

That the subject LUC Special Use Permit shall not be transferred without the prior written approval of the LUC. The appropriate Planning Commission shall make a recommendation to the LUC. However, in the event that a contested case hearing preceded issuance of said LUC Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

Response: The permittee concurs with the condition. No permit transfer request is anticipated for the SUP.

Condition No. 4

That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject LUC Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this LUC Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui and State of Hawai'i as an additional named insured, insuring and defending the applicant, County of Maui and State of Hawai'i against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the

DP within ninety (90) calendar days from the date of transmittal of the decision and order.

Response: A current Certificate of Insurance is provided as **Exhibit "C"**.

Condition No. 5

That full compliance with all applicable governmental requirements shall be rendered.

Response: The permittee concurs with the condition.

Condition No. 6

On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Response: The permittee concurs with the condition and submits this report to address compliance with all conditions of the SUP. The permittee acknowledges that compliance reports have not yet been filed to date, and respectfully requests that this compliance report fulfill the requirement since 2012. Compliance reports will continue to be filed annually as required by this condition.

Condition No. 7

That the Applicant shall develop the Property in substantial compliance with the representations made to the LUC in obtaining the Special Use Permit. Failure to so develop the property may result in the revocation of the permit.

Response: The property is currently in use as a rock quarry and base course operation as represented to the LUC while obtaining the SUP.

Condition No. 8

That the Applicant shall comply with the following recommendations of the State Department of Transportation ("DOT"):

- a. *The Applicant shall develop a maintenance plan to regularly remove dirt, debris, gravel, and other by-products of quarry operations from the quarry access road's intersection with Honoapi'ilani Highway. The Applicant shall also develop a plan for rapid removal of any quarry products spilled on the State highway right-of-way. Both plans shall be reviewed and approved by the DOT;*
- b. *No increase in storm water runoff will be allowed onto the State highway right-of-way. Plans for the construction and maintenance of retention basins shall be submitted to the DOT for review and approval; and*
- c. *Plans for work within the State highway right-of-way shall be reviewed and approved by the Highways Division, Maui District.*

Response:

- a. A roadway maintenance plan has been prepared as per this condition. A copy of the maintenance plan is attached as **Exhibit "D"**. The plan has been submitted for review and approved by the State Department of Transportation (SDOT).
- b. Plans for the construction of a retention basin and its maintenance have been prepared as per this condition. A copy of the grading and maintenance plan is attached as **Exhibit "E"**.
- c. No work in State highways is proposed as part of the quarry's operations.

Condition No. 9

That in the event any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the DLNR, SHPD, shall be contacted.

Response: The permittee concurs with the condition.

Condition No. 10

That prior to initiation of any excavation work within the 64.4-acre expansion, the following shall be resolved with the DLNR, SHPD:

- a. *Clarification in the form of archaeological inventory survey level documentation as to whether Temporary Site T-9 is a previously identified historic site;*
- b. *A preservation plan for the “agreed upon preservation areas”; and*
- c. *A thorough field inspection of the 65+ acres into which the proposed quarry will expand to determine the condition of the previously identified sites as well as documentation of any additional sites. Documentation from the DLNR, SHPD, that all concerns have been addressed shall be filed with the DP and the County Department of Public Works and Environmental Management (“DPWEM”) prior to issuance of any grading permit, if required, and initiation of excavation work within the expansion area.*

Response: As mentioned previously, an Application to Amend Permit Terms, Conditions, and Time Stipulations requesting a time extension is being prepared and will be filed with the County of Maui, Department of Planning. Also as part of this application, the permittee will be requesting that this condition be removed from the SUP approval. An Archaeological Inventory Survey (AIS) and Archaeological Monitoring Plan (AMP) have been prepared for the quarry expansion area and was submitted to the State Historic Preservation Division (SHPD) for review. Both the AIS and AMP were accepted in 2008 by SHPD. A copy of the SHPD’s acceptance letter is provided as **Exhibit “F”**. Further, it is noted that no additional expansion is being proposed.

Condition No. 11

That the Applicant shall have an onsite monitor to ensure that the load is covered and material is removed from the exterior of the truck bed and wheels to reduce debris falling onto the public roadways.

Response: The permittee concurs with the condition and confirms that monitoring of loads occurs as part of normal operations.

Condition No. 12

That upon cessation of the Pohakea Quarry operations the Applicant including the owner of the land shall prepare a closure plan to revegetate the site or other measures to reduce erosion. The closure plan shall be reviewed and approved by the DP.

Response: The permittee concurs with this condition. In the event the Pohakea Quarry operations ceases, a closure plan approved by the landowner will be submitted to the Department of Planning.

Condition No. 13

That the Applicant shall incorporate applicable Best Management Practices ("BMP") to mitigate noise, dust, runoff, and infiltration related to the Pohakea Quarry.

Response: The permittee concurs with this condition and incorporates BMPs for noise and dust mitigation into normal operations.

Condition No. 14

That the Applicant shall maintain the area between the Pohakea Stream and the southern boundary of the Property for the life of the Pohakea Quarry to provide a visual buffer.

Response: The permittee concurs with this condition.

Condition No. 15

That base course materials from the Pohakea Quarry shall not be exported off island.

Response: The permittee concurs with this condition and confirms that no base course materials from the quarry is shipped off-island.

Condition No. 16

That the protective construction fencing located around Site T-9 (a remnant of an historic wall) shall be maintained for the life of the LUC Special Use Permit. All individuals and/or organizations working on the site shall be briefed on the location of Site T-9 to avoid damaging this site.

Response: As mentioned previously, an AIS and AMP for the quarry expansion area have been submitted to and approved by the SHPD and that no further expansion of the quarry is being proposed. As such, the permittee is requesting as part of the Application

to Amend Permit Terms, Conditions, and Time Stipulations currently being prepared, that this condition be removed from the SUP approval.

Condition No. 17

That the Applicant will maintain a 25-foot buffer along the northern boundary of the Pohakea Stream. That the bed or banks of Pohakea Stream shall not be altered without an approved stream-channel alteration permit prior to construction.

Response: The permittee concurs with this condition. Alteration of Pohakea Stream is not anticipated.

Condition No. 18

That the Applicant shall obtain a National Pollutant Discharge Elimination System permit for the expansion of the Pohakea Quarry.

Response: The permittee concurs with this condition. The National Pollutant Discharge Elimination System Permit extension is in progress with the State Department of Health. See **Exhibit "G"**.

Condition No. 19

That the Applicant shall maintain its existing State Department of Health air quality permits throughout the operation of the Pohakea Quarry and shall obtain any additional air quality permits that may be required for the quarry expansion.

Response: The permittee concurs with this condition and confirms that it maintains its required air quality permits.

Condition No. 20

That the Applicant shall submit a detailed and final drainage report and a BMP Plan to the DPWEM for its review and approval.

Response: The permittee concurs with this condition and abides by its approved drainage report and BMP plan.

Condition No. 21

That the Applicant shall operate the Pohakea Quarry from Monday through Saturday, 7:00 a.m. to 5:00 p.m.

Response: The permittee concurs with this condition and confirms that the quarry's operational hours are from 7:00 a.m. to 5:00 p.m., Monday through Saturday.

Condition No. 22

That the Applicant shall file a request with the DP to terminate SUP2 96/0013 within six months following the issuance of this Decision and Order.

Response: The permittee concurs with this condition and confirms that SUP2 96/0013 has been terminated.

Condition No. 23

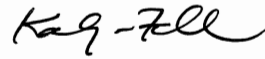
That the permitted uses and activities on the existing 14.8-acre site shall be limited to quarrying, base course production recycling of concrete debris, greenwaste composting, screening of compost material, maintenance and storage facilities to support the onsite rock crusher, and office facilities for the operation. Permitted uses and activities on the approximately 64.4-acre expansion area shall be limited to quarrying and base course production only. There shall be no composting of greenwaste and grubbed material or the recycling of concrete rubble on the expansion area.

Response: The permittee concurs with this condition and confirms that the uses occurring at each site are in compliance with the SUP approval.

Daniel Orodener, Executive Director
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Should you have any questions, please do not hesitate to contact me at (808) 244-2015.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Karlynn Fukuda'.

Karlynn Fukuda
President

KF:yp

Enclosures

cc: Dave Gomes, Hawaiian Cement (w/ enclosures)
Paul Fasi, Department of Planning (w/ enclosures)

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