

LAND USE COMMISSION

STATE OF HAWAII

September 27, 2018

Commencing at 9:30 a.m.

Natural Energy Laboratory Hawai'i Authority

73-987 Makako Bay Drive

Hale 'Iako Training Room #119

Kailua-Kona, Hawaii 96740

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. Action-SP90-374 Richard Smart Trust, dba,
Parker Ranch (Hawai'i)

VI. Adjournment

BEFORE: Jean Marie McManus, CSR #156

APPEARANCES

COMMISSIONERS:

JONATHAN SCHEUER, Chairperson
NANCY CABRAL, Vice Chair
LEE OHIGASHI
ARNOLD WONG
DAWN N.S. CHANG

RANDALL S. NISHIYAMA, ESQ.
Deputy Attorney General

STAFF:

DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk/Planner
BERT SARUWATARI, Planner

KATHERINE A. GARSON, ESQ.
RICHARD SMART
NAHUA GUILLOZ, VP Parker Ranch
For SP90-374

RON KIM, ESQ.
Deputy Corporation Counsel
JEFF DARROW, Planning Program Manager
CHRISTIAN KAY, Planner
County of Hawai'i

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1 CHAIRPERSON SCHEUER: Good morning. This
2 is the September 27, 2018 LUC meeting and Daniel
3 Orodenker's birthday. (Laughter)

4 The first item on the agenda -- laughter,
5 because we were chosen for our community interest and
6 not our singing voice.

7 With the adoption of the September 13, 2018
8 minutes, are there any questions or comments on the
9 minutes, Commissioners?

10 Hearing none, is there a motion to approve?

11 COMMISSIONER OHIGASHI: So moved.

12 VICE CHAIR CABRAL: Second.

13 CHAIRPERSON SCHEUER: Mr. Ohigashi moved
14 and Cabral has seconded. Is there any discussion?
15 Hearing none, all in favor say "aye". Any opposed?
16 Motion carries.

17 Next agenda item is the tentative meeting
18 schedule. Will the birthday boy please go over the
19 meeting schedule.

20 EXECUTIVE OFFICER: October 24th and 25th
21 we will be in Kona at King Kamehameha Hotel for the
22 Waikoloa Mauka hearing, Motion for Order to Show
23 Cause and the Adoption of the Order for Mauna Kea
24 time extension, if necessary.

25 On November 14th and 15th we will be in

1 Honolulu for Kapolei Development Motion to Extend;
2 and November 15th we will be on Maui for Emmanuel
3 Lutheran and status report on Hale Mua.

4 On November 28th, we will again be here for
5 HHFDC Lanihau and Shopoff Status Report.

6 December 12th and 13th we currently have
7 open, and January 9th and 10th we have open but we
8 are expecting both of those dates to get filled, but
9 we have some IAL and motions that are in the works.

10 CHAIRPERSON SCHEUER: Thank you very much.
11 Are there any questions for Mr. Orodenker,
12 Commissioners?

13 And I'll just remind everybody, because we
14 did not set up the microphones to please speak
15 loudly.

16 The next agenda item Action Meeting Docket
17 SP90-374 Richard Smart Trust dba Parker Ranch
18 (Hawai'i) proposed amendment. Condition No. 7 to
19 extend the life of the Special Permit for the
20 continued operation of an existing rock quarry and
21 related issues on approximately 143.480 acres of land
22 within the State Land Use Agricultural District
23 identified as TMK (3)6-7-001:34 [formerly TMK
24 (3)6-7-001:portion 25].

25 Will the parties please identify themselves

1 for the record?

2 MS. GARSON: Good morning, Chair Scheuer
3 and Commission Members, I'm Katherine Garson. I'm
4 from Carlsmith Ball for the Petitioner.

5 On my far right is Julianna Nahua Guilloz,
6 she is the Secretary for Parker Ranch, Inc., and the
7 Vice President of Business and Administration
8 Livestock, Parker Ranch, Inc., and they provide
9 support services to PR Mauna Kea, LLC.

10 To my right is Jason Macy. He is the
11 President of WHC, Ltd., doing business as West Hawaii
12 Concrete.

13 To my left is Geoy Purdy, General Manager
14 of WHC, Ltd.

15 MR. KIM: Good morning, my name is Ron Kim.
16 I'm representing the County, and with me is Christian
17 Kay and Jeff Darrow from the Planning Department.

18 CHAIRPERSON SCHEUER: Let me update the
19 record.

20 On May 10th, 2018, the Commission received
21 a copy of the Office of Planning's correspondence to
22 the Hawaii County Planning Department regarding the
23 proposed amendment.

24 On July 11, 2018, the Commission received
25 record of the Hawai'i Planning Commission's

1 proceedings on the Applicant application to amend the
2 special permit.

3 On August 20th, the Commission received the
4 Applicant's State Special Use Permit application and
5 Exhibits 1 through 37 from the County of Hawaii.

6 On August 28, the Commission received the
7 \$1,000 filing fee from the Petitioner's
8 representative.

9 On September 14th, the Commission received
10 a replacement letter to correct non-substantive
11 errors made to conditions that already existed. (No
12 corrections were made to the condition requested to
13 be amended by the Applicant).

14 On September 18th, the Commission mailed
15 and emailed the September 27, 2018 agenda notice to
16 the Parties and the Statewide and Hawaii County
17 mailing lists.

18 On September 26th, yesterday the Commission
19 received notice from Office of Planning that they
20 would not be attending today's meeting.

21 Let me briefly describe our procedure for
22 today.

23 First, I will give the opportunity for the
24 Applicant to comment on the Commission's Policy
25 governing reimbursement of hearing expenses.

1 Next, I will call for any individuals
2 desiring to provide public testimony of which
3 obviously there are currently not.

4 After the completion of initial public
5 testimony, the Applicant will then make their
6 presentation.

7 After Applicant's presentation, we will
8 receive any comments from Hawaii County Department of
9 Planning.

10 After completion of the County's
11 presentation, the Commission will conduct its
12 deliberation.

13 In the absence of the Office of Planning's
14 correspondence on this matter did state that although
15 they are unable to attend the meeting, they have
16 reviewed, commented on and supported the request for
17 amendment for an existing State Special Permit to
18 grant a time extension until September 30th, 2037 to
19 allow continued operation of existing rock quarry.

20 Also from time to time I'll be calling for
21 short breaks.

22 Any questions on our procedure today?

23 Mrs. Garson, has our staff informed you of
24 the Commission's policy regarding the reimbursement
25 of hearing expenses?

1 MS. GARSON: Yes, they have, and we accept
2 them.

3 CHAIRPERSON SCHEUER: I'm going to note
4 that there is nobody in the room who wishes to
5 provide public testimony. So we can go ahead and
6 proceed directly to the presentation by Petitioner.

7 MS. GARSON: Good morning and thank you for
8 having us here. We are here to ask that there be a
9 time extension for the Special Permit that is
10 currently in existence to run concurrently with the
11 lease between WHC and Mauna Kea which expires 30th,
12 2037. We are not asking for any increase in the
13 area, just merely the time extension request.

14 And there was a bit of an ambiguity as to
15 whether or not we needed to come forward and request
16 the time extension, but we are doing so just to make
17 sure that the record is clear.

18 Just a little bit of history on the
19 property.

20 A quarry has been on a portion of this
21 property since 1945. In 1990, special permit was
22 issued for an original 30 acre and an additional
23 about 91 acres, and that happened in 1990.

24 Subsequently, in 2000 the time extension
25 was granted on the special permit, and the area was

1 extended another about 51 acres. So the current
2 Petition Area is 143.48 acres.

3 There is an approximately 8 million tons of
4 rock left to be quarried, which is why we are asking
5 for this time extension to correspond with the lease
6 currently.

7 The location of the quarry is mauka of
8 Mamalahoa Highway, and it is in between where the Old
9 Saddle Road comes down and Waimea Town. So it's
10 approximately four miles above the highway, three,
11 four miles above the highway.

12 I know you read the Application, don't want
13 to belabor anything, just wanted to very, very
14 quickly go through the criteria about the unusual and
15 reasonable uses.

16 The unique thing about this quarry is that
17 it is the only quarry that WHC has that they quarry
18 the aggregate, an aggregate that has a low alkalized
19 silica reactivity. And because of this alkalized
20 silica activity it is less likely to fail when it is
21 used in a concrete form.

22 And if you have any more questions about
23 that, I am going to have Mr. Macy answer that. That
24 is the extent of my knowledge about the aggregate.

25 So the rock from this quarry is the bottom

1 line. One of the other things -- so because of the
2 increased economic opportunities, it supports a local
3 construction industry, keeps things on island, if we
4 can utilize our resources here.

5 Also affecting the surrounding property,
6 again, this location is fairly remote, and so it's
7 about, again, it's above the highway, but it's about
8 six miles away from Waimea Town. And the nearest
9 residence is probably about that distance away too
10 (indicating).

11 There have never been any complaints about
12 noise or complaints about dust because of this
13 location. Location is also arid and barren. And,
14 again, it's been quarried since 1945. It's not --
15 it's not a site which would be good for other types
16 of intensive agricultural use.

17 In fact, even for pasturing purposes, it
18 has a low carrying capacity, meaning more land would
19 be needed to pasture a particular animal.

20 And, again, if you want to know more about
21 that, that is why Guilloz is here to speak about
22 that.

23 As far as burdening any public agencies,
24 there is no -- they use a portable toilet there.
25 There's no wastewater needs. Water is -- water use

1 is very minimal. It's for washing hands, little bit
2 of dust control.

3 There is maybe 20 to 30 vehicles a day
4 coming in depending on whether or not rock is being
5 crushed at that time.

6 I think I have addressed all the criteria
7 for special permit. So that is the presentation, and
8 we're here to answer any questions that you may have.

9 CHAIRPERSON SCHEUER: Thank you. County,
10 any questions for the Applicant?

11 MR. KIM: County did not have any questions
12 for the Applicant. Just would note Leeward Planning
13 Commission did give favorable recommendation.

14 CHAIRPERSON SCHEUER: Commissioners?

15 VICE CHAIR CABRAL: I'll ask a question --

16 CHAIRPERSON SCHEUER: Commissioner Cabral.

17 VICE CHAIR CABRAL: -- since it's my
18 island.

19 You mentioned perhaps the more expert
20 opinion or information I'm looking for is why is this
21 such a superior type of rock?

22 And then, how did that benefit all of our
23 construction on this island? Certainly benefits not
24 to have to ship in those tons for construction.
25 Maybe little bit more about why that is such a good

1 product.

2 CHAIRPERSON SCHEUER: Before you go on, I'm
3 going to swear you in as a witness.

4 Do you swear or affirm that the testimony
5 you're about to give is the truth?

6 MR. MACY: Yes, I do.

7 CHAIRPERSON SCHEUER: Introduce yourself.

8 JASON MACY

9 Was called as a witness on behalf of the Applicant,
10 was sworn to tell the truth, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Jason Macy, President of
14 WHC, Ltd.

15 The uniqueness of the flow is it's an older
16 Mauna Kea flow, so the rock is very dense. And when
17 you're manufacturing concrete, you're looking for as
18 little absorption, which is water absorbing into the
19 rock, and it has a really low absorption, so you are
20 able to save on the import cement that we hire from
21 Asia, and so it gives you lot more productive and
22 reliable product.

23 We have another quarry in Waikoloa that we
24 do have that uses that's alkalized silica reactive
25 material. And what happens with that material was

1 when you introduce water to the product, the alkaline
2 is cement that's an alkaloid, and a reaction occurs
3 to where concrete starts to expand after like ten
4 years, which is the worst thing you can have happen
5 to concrete.

6 Just picture a sidewalk in Waikiki starting
7 to expand, and when it expands, it will start to
8 break.

9 And so that quarry we cannot use at all for
10 concrete because of that, but it does work for
11 asphalt. So it's primarily an asphalt quarry is what
12 we use that for.

13 CHAIRPERSON SCHEUER: Any other questions
14 for the Petitioner?

15 COMMISSIONER OHIGASHI: I'm just curious,
16 you said 8 million tons left?

17 THE WITNESS: Approximate.

18 COMMISSIONER OHIGASHI: What is the tonnage
19 per year that you plan extraction?

20 THE WITNESS: It really depends on the
21 construction site. Right now we are in a pretty good
22 construction type building. So we'll probably export
23 somewhere around 150 to 200,000 tons this year,
24 because right now we're in a pretty good cycle on the
25 Big Island to where the material is needed.

1 COMMISSIONER OHIGASHI: What extra types of
2 things or procedure that has to be followed in order
3 for you to transport that amount? Do you have to --
4 there must be certain dust control requirements.

5 THE WITNESS: Yeah, Department of Health.
6 We see them at A minimum one time a year. They will
7 come out and inspect us.

8 So to answer that dust control, we do have
9 a water truck, 4,000 gallon water truck that we use
10 to control dust on our haul road.

11 COMMISSIONER OHIGASHI: That's all? What
12 other -- what are the extraordinary methods, or
13 things that you have to do to transport?

14 THE WITNESS: It's really not -- we
15 basically hire contractors. We have our own trucks
16 as well, and we just load the material in the quarry,
17 bring it down the haul road, and then from there it
18 gets spread out to various construction locations
19 mainly on the west side of the island. We don't do
20 much work on the east side, mainly west side.

21 COMMISSIONER OHIGASHI: Are you doing your
22 maximum amount of extraction?

23 THE WITNESS: No, we're not. Right now, we
24 are not -- we have portable crushers that we bring in
25 to anyone of our quarries, but we are not at maximum

1 capacity. We still have additional capacity. If the
2 market needed more rock, we have capacity to expand
3 production capabilities.

4 COMMISSIONER OHIGASHI: Is it in your plan
5 to leave remaining rocks, or leave me remaining areas
6 that won't be mined? Is it your intention to use the
7 Whole 8 million tons?

8 THE WITNESS: That is our plan is to
9 extract whatever. And there are some inferior rock
10 in that quarry, so some that of that we have to
11 process for a different product that doesn't meet
12 that highest standard for rock.

13 But, yeah, we pretty utilize all the
14 material on that quarry site, whether it be -- we
15 sell a lot of soil. Waimea's got some really good
16 thick soil layers in there so we'll sell -- some will
17 be distributed in the Kona area where there's only
18 lava aggregate.

19 The main product coming out of there is
20 concrete aggregate, asphalt aggregate for the
21 construction industry.

22 CHAIRPERSON SCHEUER: Any further
23 questions?

24 COMMISSIONER CHANG: Just one.

25 The request is to run coterminous with the

1 Parker lease. At the end of the quarry, at the end
2 of the lease term, will you restore the site with
3 vegetation?

4 THE WITNESS: We choose to restore as we
5 mine. And so the quarry is a little bit visible, but
6 we don't want to stand out like a sore thumb. So as
7 we finish an area, we re-naturalization that. We
8 save a lot of the soil so we can redo that. And
9 especially for the ranch. You know, at the end of
10 the life of that quarry it's going to go back to
11 pasture land, so we need to make sure we're creating
12 usable product for the ranch.

13 COMMISSIONER CHANG: Is that a condition of
14 your lease?

15 THE WITNESS: It is.

16 COMMISSIONER CHANG: Thank you.

17 CHAIRPERSON SCHEUER: Commissioner Cabral.

18 VICE CHAIR CABRAL: When you return it,
19 I've been to the coal -- not mines, but coal fields
20 in Wyoming where they excavate. They take all of
21 this information and then they excavate. And when
22 they return it, it is literally identical, the slope,
23 the land, everything identical after they've taken
24 the tonnage of coal out.

25 Are you guys going to reshape it identical,

1 are you going to make it a nice place?

2 THE WITNESS: What we are doing for the
3 ranch is, we're putting a two to one slope on all the
4 banks in there, so it will all funnel down to where
5 cattle can actually graze on the hills and be able to
6 have it be a viable pasture for Parker Ranch.

7 VICE CHAIR CABRAL: Because you don't know
8 what it will look like in -- okay, thank you.

9 CHAIRPERSON SCHEUER: Commissioners,
10 further questions?

11 I have one question. The Applicant briefly
12 discussed or reviewed what is in the record about the
13 failure to provide annual reports to the LUC. And
14 what steps have been taken to address that?

15 MS. GARSON: Annual reports were provided.

16 CHAIRPERSON SCHEUER: There was a period of
17 time --

18 MS. GARSON: Oh, there was a delay. I
19 can't answer that.

20 THE WITNESS: We have done it. We have
21 rectified the problem, so the annual reports will be
22 going out on time, not only for this permit, but we
23 have one other permit that we were late on.

24 MS. GARSON: And Parker Ranch is also --
25 added -- (indecipherable).

1 CHAIRPERSON SCHEUER: Do you swear or
2 affirm that the testimony you're about to give is the
3 truth?

4 MS. NAHUA: Yes.

5 CHAIRPERSON SCHEUER: Identify yourself for
6 the record.

7 NAHUA GUILLOZ

8 Was called as a witness by and on behalf of the
9 Applicant, was sworn to tell the truth and examined
10 as follows:

11 DIRECT EXAMINATION

12 THE WITNESS: Nahua Guilloz with Parker
13 Ranch as a representative for PR Mauna Kea LLC.

14 And to answer partly as well as from the
15 lessor side, we will also have added it to our
16 calendar, so that way we take care of all the
17 complaints we will be following up with WHC to make
18 sure every year those get filed and appropriate.

19 CHAIRPERSON SCHEUER: Thank you very much.

20 If nothing further, County, do you have
21 anything to present on this matter?

22 MR. KIM: No. Again, Leeward Planning
23 Commission gave favorable recommendation, and I have
24 nothing to present beyond our letter which the
25 Commission received on September 14th.

1 Mr. Darrow would like to make a comment.

2 CHAIRPERSON SCHEUER: Do you swear or
3 affirm that the testimony you're about to give is the
4 truth?

5 MR. DARROW: I do.

6 JEFF DARROW
7 Was called as a witness by and on behalf of the
8 County of Hawai'i, was sworn to tell the truth, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 THE WITNESS: My name is Jeff Darrow,
12 Planning Program Manager with the Planning Division
13 for County of Hawai'i.

14 We'd just like to make a comment and that
15 is that we're very appreciative to the Applicants for
16 taking this step. This was unique because the
17 condition itself wasn't clear. It was basically
18 saying that the lease ran -- I mean, that the life of
19 the permit was coterminous with the lease, but there
20 happened to be a small footnote, and that footnote
21 actually had a date to it.

22 So there was a question: Do we go with the
23 condition, or do we go with the footnote?

24 But the Applicants chose to side on the
25 side -- I mean to err on the side of caution and be

1 able to present the request so we're clear on the
2 record.

3 So that was also reflected in the new
4 condition that there's actually a date as well as the
5 reference to the lease.

6 CHAIRPERSON SCHEUER: Thank you.

7 Commissioners, do you have any questions
8 for the County of Hawaii?

9 Hearing none, Commissioners, what is your
10 pleasure on this manner?

11 VICE CHAIR CABRAL: I'll move to accept the
12 -- receive and accept to approve their request.

13 COMMISSIONER WONG: Is this to amend the
14 Condition No. 7 to approve?

15 CHAIRPERSON SCHEUER: Let's take a
16 two-minute recess.

17 (Recess taken.)

18 CHAIRPERSON SCHEUER: We're out of recess.
19 Commissioner Cabral.

20 VICE CHAIR CABRAL: I would like to go
21 ahead and move that we opt that they would correct,
22 accept their correction of the topographical error in
23 Condition No. 4 renumbered to Condition No. 2. To
24 amend Condition No. 6 renumbered to Condition No. 4
25 to:

1 One, identify the applicant and/or quarry
2 operator as the responsible party to cease work,
3 protect any fine, and contact the SHPD;

4 And two, identify the individual at the
5 SHPD contact rather than to rely on a telephone
6 number.

7 To amend Condition No. 11 renumbered to
8 Condition No. 9 to retain language addressing
9 noncompliance with the conditions of the Applicant,
10 and to authorize the Chair to sign the order in this
11 matter on behalf of the Commission.

12 CHAIRPERSON SCHEUER: Thank you.

13 Is there somebody who wants to second the
14 motion?

15 COMMISSIONER WONG: Can I make a friendly
16 amendment? Let me second it, and can I request for a
17 friendly amend?

18 CHAIRPERSON SCHEUER: Please proceed.

19 COMMISSIONER WONG: Can I also authorize
20 the Chair to sign the order instead of us having to
21 come back on behalf of the Commission?

22 VICE CHAIR CABRAL: I did include that.

23 COMMISSIONER WONG: I retract that. I
24 second it.

25 VICE CHAIR CABRAL: The staff got that in

1 there for me.

2 CHAIRPERSON SCHEUER: There is a motion
3 that has been made and seconded to approve the permit
4 with conditions and modifications. Is there any
5 discussion on the motion before us?

6 Hearing none, Mr. Orodenger, please pole
7 the Commission.

8 EXECUTIVE OFFICER: The motion is to
9 approve the request to amend the conditions' various
10 changes to Condition 26 and 11 and authorize the
11 Chair to sign the Decision and Order.

12 Commissioners Okuda, Mahi and Aczon are
13 absent.

14 Commissioner Cabral?

15 VICE CHAIR CABRAL: Yes.

16 EXECUTIVE OFFICER: Commissioner Wong?

17 COMMISSIONER WONG: Yes.

18 EXECUTIVE OFFICER: Commissioner Chang?

19 COMMISSIONER CHANG: Yes.

20 EXECUTIVE OFFICER: Commissioner Ohigashi?

21 COMMISSIONER OHIGASHI: Yes.

22 EXECUTIVE OFFICER: Chair Scheuer?

23 CHAIRPERSON SCHEUER: Yes.

24 EXECUTIVE OFFICER: Thank you. Mr. Chair,
25 the motion passes five votes.

1 CHAIRPERSON SCHEUER: Thank you very much.
2 I believe there's no other business to address, and
3 perhaps a record. This meeting is adjourned.

4 (The proceedings adjourned at 9:59 a.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on September 27, 2018, at 9:30 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 27th day of September, 2018, in Honolulu, Hawaii.

/s/Jean Marie McManus
JEAN MARIE McMANUS, CSR #156