

From: [Noah Walin](#)
To: [WPCtestimony](#)
Subject: General Plan Update Special Meeting Testimony
Date: Tuesday, December 3, 2024 5:18:25 PM
Attachments: [WPC GP Amendment Request 241203.pdf](#)

Aloha Windward Planning Commission,

Please see the attached testimony letter regarding the update to the County of Hawaii General Plan 2045.

Mahalo,

Noah Walin | PACIFIC RIM LAND, INC.

Project Coordinator

1300 N. Holopono Street, Suite 201

P.O. Box 220, Kihei, Maui, Hawaii 96753

Office: 808-270-5943 | **Direct: 808-419-4610**

E-mail: NoahW@pacificrimland.com



December 3, 2024

Mr. Zendo Kern, Director
Planning Department
COUNTY OF HAWAII
101 Pauahi Street
Hilo, HI 96720

Subject: General Plan Update Request
Waikoloa, South Kohala, Hawai`i, TMK: 6-8-001: 066

Dear Mr. Kern and Members of the Windward Planning Commission,

I am writing to request the County's consideration of designating TMK: 6-8-001:066 as Heavy Industrial (HI) in the County of Hawaii General Plan Update 2045. In April 2019, a letter was submitted on behalf of the landowners (WQJ2008 Investment, LLC and Ukumehame Quarry Limited Partner, "Owners"), requesting that the property identified by TMK: 6-8-001:066 would be re-designated on the General Plan Land Use Pattern Allocation Guide ("LUPAG") map from Urban Expansion to Industrial. A copy of the letter is attached as **Exhibit A**. This letter is to reconfirm the desire that the property should be designated HI on the LUPAG map in the County of Hawaii General Plan Update 2045, see **Figure 1**.

The subject property, consisting of 245+ acres, is situated on the south or Kona side of Waikoloa Road, midway between Waikoloa Village and the Queen Ka`ahumanu Highway in Waikoloa, South Kohala, Hawai`i. Currently, the site has a quarry, asphalt batch plant with related activities and a base yard. These uses operate with special permits described below, see **Exhibit B** and **C**.

The reasons justifying this request are:

- a. From a land use perspective, the entire 245+ acre property has already been committed to industrial activities for an extended period of time.

On January 19, 1993, the State Land Use Commission ("LUC") approved Special Permit (SPP 833) request to operate a quarry and related activities on approximately 219.99 acres of land. On February 26, 2016, the LUC extended the life of the permit as well as allowed other industrial uses to December 31, 2043.

Relatedly, on October 6, 2008, the County Planning Commission approved Goodfellow Brothers Inc.'s request for a *"base yard to provide equipment and motor vehicle maintenance and repair services and related uses"* on the 14.77 acre area immediately adjacent to the 219+ acre quarry site. The Special Permit (SPP 08-00064) was subsequently extended by the Leeward Planning Commission on August 16, 2018, to run coterminous with the life of SPP 833, which is December 31, 2043, see **Exhibit D**.

Given the site's current industrial use and its entitled life (year 2043), having this site designated HI would be most appropriate.

The site is currently designated *Urban Expansion*. According to the General Plan, *Urban Expansion* allows land use consideration for a *"a mix of high density, medium density, low density, industrial-commercial mix and/or natural designations in areas where new growth may be desirable, but where the specific settlement pattern and infrastructure have not been determined."* While *Heavy Industrial* designation allows *"uses including but not limited to landfills, quarries, chemical plants, heavy equipment base yards, towing yards, and other uses with the potential to create public nuisance conditions (e.g., noise, environmental impacts)."*

As noted earlier, the subject site is already entitled for certain type of industrial uses until the year 2043, which is nineteen (19) years from now. Thus, these land use entitlements have, de facto, established an Industrial land use pattern for this area

b. Having the HI designation would make it more feasible to secure a State Land Use Urban boundary amendment and County Industrial zoning. Such designations would then allow additional industrial uses which could support the community - such as warehousing, self storage facility and the like - not covered by the specific use limitation of a Special Permit. This would obviate the need to seek new or amended Special Permits for uses not expressly covered by the existing Special Permits.

c. Finally, the site does not have any developmental constraints and is reasonably serviced with supportive infrastructure. Based on studies conducted for the existing Special Permits, the site does not have any archaeological, topographical, or drainage issues. Likewise, it has adequate infrastructure, particularly access to potable water, and all other infrastructure requirements can be reasonably addressed.

The transition to LUPAG HI designation would not represent a significant change to the nature of the area but rather formalize and legalize existing uses. We also believe this proposal aligns with the County's broader goals of supporting responsible development and sustainable land use planning.

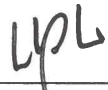
Again, we respectfully request your favorable consideration of our request. Should you have any questions or wish further information on this matter, please feel free to contact Noah Walin via email at noahw@pacificrimland.com or 808-270-5943.

Sincerely,

WQJ2008 INVESTMENT, LLC

By Pacific Rim Land, Inc.

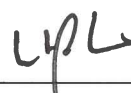
Its Manager

By  _____
Leilani Pulmano
Vice President, Pacific Rim Land, Inc.

Ukumehame Quarry Company Limited
Partnership

By Pacific Rim Land, Inc.

Its Manager

By  _____
Leilani Pulmano
Vice President, Pacific Rim Land, Inc.



April 8, 2019

Mr. Michael Yee, Director
Planning Department
COUNTY OF HAWAII
101 Pauahi Street
Hilo, HI 96720

Dear Mr. Yee:

**Subject: General Plan Update Request - WQJ2008 Investment, LLC and
Ukumehame Quarry Limited Partner
Waikoloa, South Kohala, Hawai'i, TMK: 6-8-001: 066**

Beginning February 6, 2015, the Department officially commenced its mandatory 10-year comprehensive update of the County General Plan. At that time, your website noted that the public had an opportunity to provide initial comments on this by June 6, 2015. The Department would then review these comments and internal and/or consulted studies from June 6 to April 2017. Preliminary recommendations would then be formulated by the Department which would then serve as a basis for public workshops. Subsequently, an official draft of the Plan would then be forwarded to the Leeward and Windward Planning Commissions for public hearings; revisions would then be made before final recommendatory action is taken by the Commissions. The County Council, based on the recommended draft of the Plan would then conduct its review and take appropriate action between August 2017 to January 2018. During the course of this process, there will understandably be ample opportunity for further public input.

It is our understanding that the proposed schedule noted above has been pushed back due, in large measure, to other demands placed on the Department. Accordingly and inasmuch as the Department is still in the throes of preparing the first document that would be used as a basis for public workshops, on behalf of the landowners (WQJ2008 Investment, LLC and Ukumehame Quarry Limited Partner (hereinafter referred to collectively as "**Applicant**") where the major tenant is Goodfellow Brothers, LLC, we respectfully request your favorable consideration in having the subject property, identified by TMK: 6-8-001: 006, re-designated on the General Plan Land Use Pattern Allocation Guide ("**LUPAG**") map from ***Extensive Agriculture/Urban Expansion to Industrial***. A copy of the letter of authorization from the landowner is attached.

The subject property, consisting of 245+ acres, is situated on the south or "Kona" side of Waikoloa road, midway between Waikoloa Village and the Queen Ka'ahumanu Highway in Waikoloa, South Kohala, Hawai'i. Currently, the site has a quarry with related activities and a base yard. **(Figures 1 and 2)**

The reasons for this request are:

- a. From a land use perspective, the entire 245+ acre property has already been committed to industrial activities for an extended period of time.

On January 19, 1993, the State Land Use Commission ("LUC") approved Special Permit (SPP 833) request to operate a quarry and related activities on approximately 219.99 acres of land. On February 26, 2016, the LUC extended the life of the permit as well as allowed other activities or uses to essentially December 31, 2043.

Relatedly, on October 6, 2006, the County Planning Commission approved Goodfellow Brothers LLC's Special Permit request (SPP 08-00064) for a "*base yard to provide equipment and motor vehicle maintenance and repair services and related uses*" on the 14.77 acre area immediately adjacent to the 219+ acre quarry site. The Special Permit was subsequently extended by the Leeward Planning Commission on August 16, 2018, to run essentially coterminous to the life of SPP 833, which would be December 31, 2043.

The areas covered by SPP 833 (219.99 acres) and SPP 08-00064 (14.77 acres) were originally part of a 3,049 acre parcel identified by TMK: 6-8-01: 005. In a letter, dated November 18, 2008, the Planning Director granted final subdivision approval of the 3,049 acre parcel into three (3) parcels. The 219.99 acre quarry and the 14.77 acre base yard were now situated on one of those lots, consisting of 245.794 acres and identified by TMK: 6-8-001: 066. The other two (2) lots were identified by TMK: 6-8-01: 067 (934.660 acres) and the "parent" lot, TMK: 6-8-01: 05 (1,871.540 acres). The applicant's request covers only the 245+ acre area identified by TMK: 6-8-001: 066.

Given the site's current industrial use and its entitled life (year 2043), having this site designated *Industrial* would be most appropriate. Further, as part of the mandatory 10-year General Plan review/update process (which possibly could be in the year 2030), this designation (if approved) and the designations of all properties within the County will again be re-evaluated. The *Industrial* designation could be retained or, if a more suitable land use designation is deemed appropriate, changed.

- b. Although the site is designated *Extensive Agriculture*, it also has an *Urban Expansion* overlay. According to the General Plan, *Urban Expansion* allows land use

Mr. Michael Yee, Director

April 8, 2019

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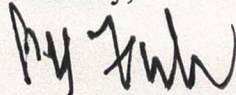
consideration for a “*a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not been determined.*” Thus, conceivably all uses, with the exception of resort, could be considered within an *Urban Expansion* area.

As noted earlier, the subject site is already entitled for certain type of industrial uses until the year 2043, which is nearly twenty-five (25) years from now. Thus, these land use entitlements have, de facto, established a land use pattern for this area. Given that, future land uses adjacent or proximate to this area can be more appropriately planned. For example, it would be less likely that a residential subdivision would be planned adjacent to an area designated *Industrial* on the *LUPAG* map.

- c. Having the *Industrial* designation would make it more feasible for a portion or the entire site to secure a State Land Use *Urban* boundary amendment and subsequent County *Industrial* zoning. Such designations would then allow a plethora of industrial uses which could support the community - such as warehousing, self storage facility and the like - not covered by the specific use limitation of a Special Permit. This would obviate the need to seek new or amended Special Permits for uses not expressly covered by the Special Permits.
- d. Finally, the site does not have any developmental constraints and is reasonably serviced with supportive infrastructure. For example, based on studies conducted for the existing Special Permits, the site does not have any archaeological, topographical, or drainage issues. Likewise, it has adequate infrastructure, particularly access to potable water, and all other infrastructure requirements can be reasonably addressed.

Again, we respectfully request your favorable consideration of the Applicant's request. Should you have any questions or wish further information on this matter, please feel free to contact me. Thank you very much!

Sincerely,



SIDNEY M. FUCE
Planning Consultant

Enclosures

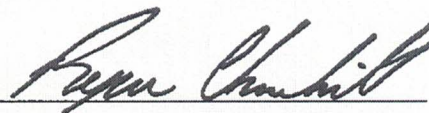
Copy – Goodfellow Brothers, LLC w/ enclosure via email

TO WHOM IT MAY CONCERN:

Please be informed that as Applicant and Landowner(s), we hereby consent and have no objections to SIDNEY FUKU, PLANNING CONSULTANT submitting our request to have a property, identified by TMK: 6-8-001: 066, designated INDUSTRIAL on the General Plan Land Use Pattern Allocation Guide Map in conjunction with the General Plan Update Program.

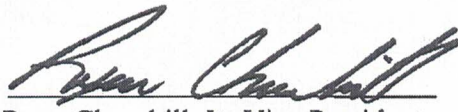
APPLICANT / LANDOWNERS: WQJ2008 INVESTMENT, LLC,
a Washington limited liability company

By: Columbia Valley Investments, Inc.,
a Washington corporation
Its Manager

By: 
Ryan Churchill, Its Vice President

UKUMEHAME QUARRY COMPANY
LIMITED PARTNERSHIP, a Hawaii limited
partnership

By: Ukumehame Quarry Management, Inc.,
a Hawaii corporation,
Its General Partner

By: 
Ryan Churchill, Its Vice President
Date: 4/8/19

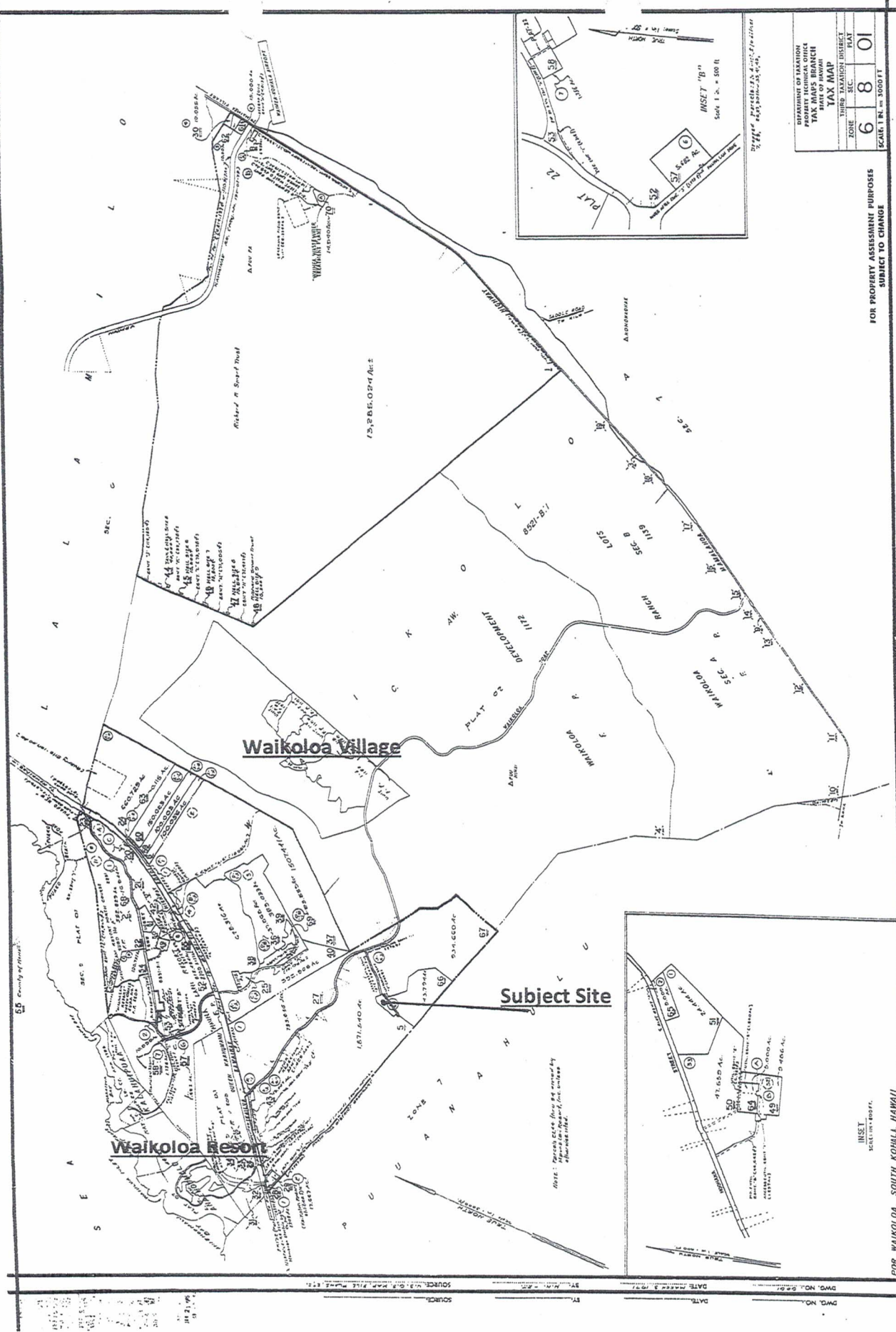


Figure 1

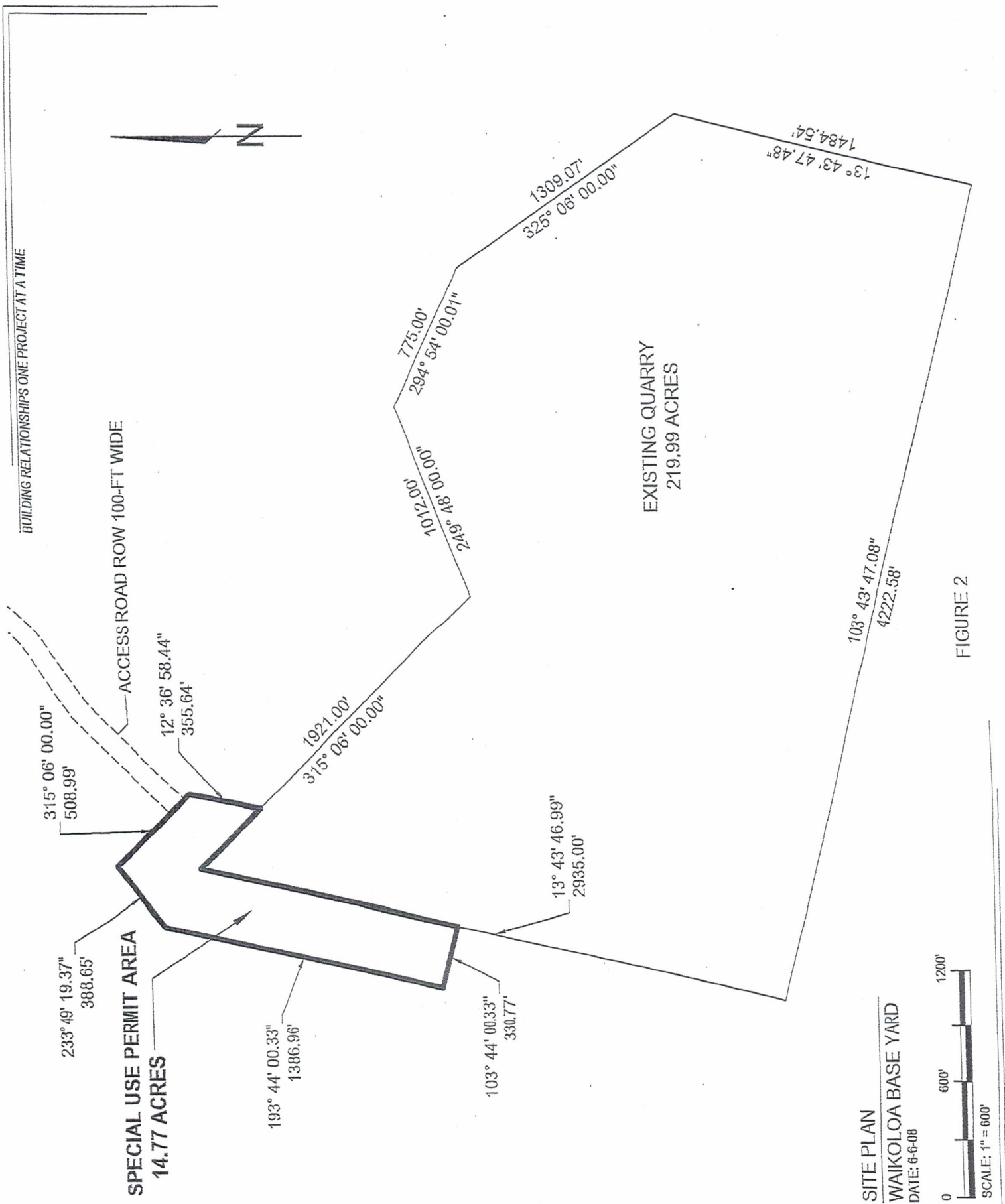


Figure 2

Figure 1

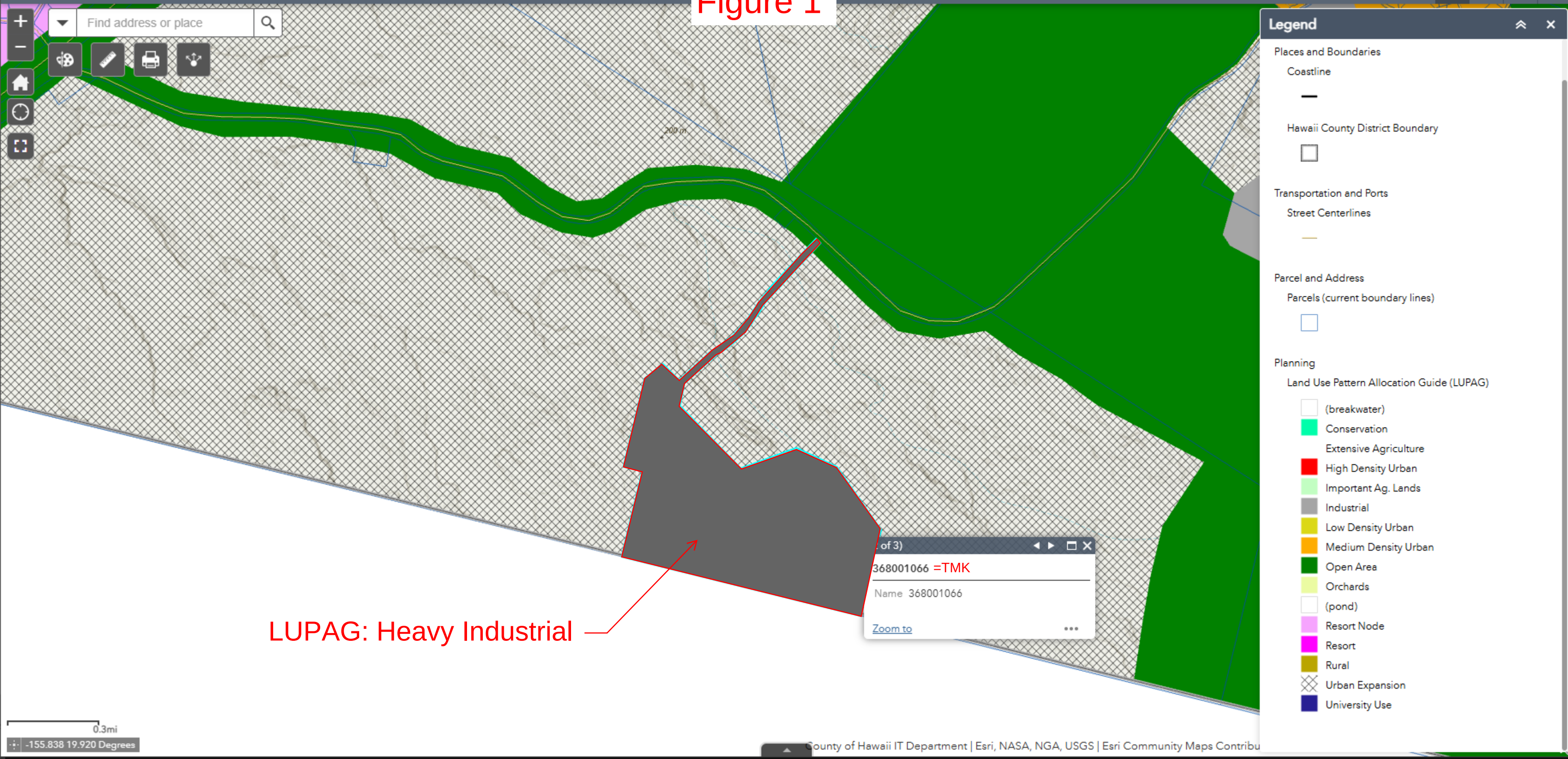


Exhibit B



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2016 FEB 26 A 8:49

In the Matter of the Application of	)	Docket No. SP92-381
	)	
WAIKOLOA DEVELOPMENT	)	FINDINGS OF FACT, CONCLUSIONS
COMPANY	)	OF LAW, AND DECISION AND
	)	ORDER APPROVING THE
For the Establishment of a Quarry	)	RECOMMENDATION OF THE
Operation and Allied Uses on	)	COUNTY OF HAWAII LEEWARD
Within the State Land Use Agricultural	)	PLANNING COMMISSION TO
Approximately 220 Acres of Land Situated	)	AMEND THE STATE SPECIAL
District at Waikoloa, South Kohala, Hawai'i	)	USE PERMIT AND CERTIFICATE
Tax Map Key No.: 6-8-01: portion of 5	)	OF SERVICE
(nka approximately 219.990 acres at	)	
Waikoloa, South Kohala, Island of Hawai'i	)	
Tax Map Key No.: (3) 6-8-001: 066	)	
	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER APPROVING THE RECOMMENDATION OF THE
COUNTY OF HAWAII LEEWARD PLANNING COMMISSION TO AMEND
THE STATE SPECIAL USE PERMIT
AND
CERTIFICATE OF SERVICE

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, Hawai'i.

February 26, 2016 by

Daniel E. Orodener, Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2016 FEB 26 A 8:49

In the Matter of the Application of	)	Docket No. SP92-381
	)	
WAIKOLOA DEVELOPMENT	)	FINDINGS OF FACT, CONCLUSIONS
COMPANY	)	OF LAW, AND DECISION AND
	)	ORDER APPROVING THE
For the Establishment of a Quarry	)	RECOMMENDATION OF THE
Operation and Allied Uses on	)	COUNTY OF HAWAII LEEWARD
Within the State Land Use Agricultural	)	PLANNING COMMISSION TO
Approximately 220 Acres of Land Situated	)	AMEND THE STATE SPECIAL
District at Waikoloa, South Kohala, Hawaii	)	USE PERMIT
Tax Map Key No.: 6-8-01: portion of 5	)	
(nka approximately 219.990 acres at	)	
Waikoloa, South Kohala, Island of Hawaii	)	
Tax Map Key No.: (3) 6-8-001: 066	)	
	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER APPROVING THE RECOMMENDATION OF THE
COUNTY OF HAWAII LEEWARD PLANNING COMMISSION TO AMEND
THE STATE SPECIAL USE PERMIT

The State of Hawaii Land Use Commission ("LUC"), having examined the complete record of the County of Hawaii Leeward Planning Commission ("Planning Commission") proceedings on amending the State Special Use Permit ("SUP") Application ("Application") filed by West Hawaii Concrete ("Applicant"), pursuant to section 205-6, Hawaii Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawaii Administrative Rules ("HAR"), and Rule 6 of Planning Commission Rules of Practice and Procedure to: (1) to amend existing Condition

No. 12 to extend the life of Special Permit ("SP 833")¹ so that the quarrying and other activities can continue to 2043 or longer (i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063); (2) include greenwaste composting as an expressly permitted use under the Special Permit; and (3) allow for the processing and recycling of Portland cement concrete and asphalt concrete pavement on the Special Permit site (also referred to as "Project") on approximately 219.990 acres of land situated at Waikoloa, South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005), and upon consideration of the matters discussed therein, argument of counsel and public comments at its meeting on February 9, 2016, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On September 15, 2015, WHC, LTD., a Hawai'i corporation doing business as West Hawaii Concrete ("Applicant") filed a request with the Hawai'i County Planning Department (the "Planning Department") to amend the special permit issued in the above-entitled docket pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, and Rule 6 to: (1) to amend existing Condition No. 12 to extend the life of Special Permit No. 833 (the "SP 833") so that the quarrying and other activities can continue to 2043 or longer (i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063); (2) include greenwaste compositing as an expressly permitted use under the Special Permit; and (3) allow for the processing and

¹ SP 833 is a county designation for tracking the State Special Permit they review. Once it is forwarded with a recommendation to the State Land Use Commission it is given an official State Special Permit docket number; in this case SP92-381.

recycling of Portland cement concrete and asphalt concrete pavement on the Special Permit site on approximately 219.990 acres of land situate at Waikoloa, South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005) (the "Application").

2. Applicant has operated a quarry at the 219.990 acre site ("Petition Area") since 1995 under a license agreement with the landowner, which is now WQJ2008 Investment, LLC, a Washington limited liability company (as to an undivided 85.714% interest), and Ukumehame Quarry Company Limited Partnership, a Hawai'i limited partnership (as to an undivided 14.286% interest), as tenants in common ("Owner").
3. The County of Hawai'i Planning Commission authorized SP 833 at its hearing on September 22, 1992, and the State of Hawai'i Land Use Commission ("LUC") issued its Findings of Fact, Conclusions of Law, and Decision and Order in LUC Docket No. SP92-381 authorizing SP 833 on January 19, 1993 ("LUC D&O").
4. SP 833 allows the Petition Area to be used for blasting, drilling, rock crushing and screening, concrete ready-mix batching, pre-casting, asphaltic concrete products manufacturing equipment and materials storage and repair, and other necessary uses and activities related to providing a source of rock aggregate and concrete and asphalt products.
5. Included with the current Application were 24 exhibits, as follows: (1) Map & Metes and Bounds Submitted to Planning Department, dated 10/2/92 and Planning Department Acceptance, dated 10/22/92; (2) Subdivision Map, Sub No. 07-000696; (3) Fee Owner's Authorization; (3A) Licensee's Authorization; (4) Annual Monitoring Report; (5) 1996

Final Plan Approval; (6) Site Plan of Current Quarry Area and Proposed Quarry, Recycling, and Greenwaste Composting Area and Activities; (7) 2011 DOH Solid Waste Mgt Application and Permit; (8) State Land Use District Map; (9) County Zoning Map; (10) Flood Zone Map; (11) Dr. Robert Rechtman 1999 Letter re Monitoring; (12) 2015 Archaeological Assessment; (12A) SHPD Letter dated August 12, 2015; (13) Waikoloa Quarry Ka Pa'akai Discussion; (14) Land Study Bureau Map; (15) ALISH Map; (16) General Botanical Survey, July 2015; (17) Blackburn's Sphinx Moth Surveys; (18) Hydrologic Assessment; (19) Photos of Quarry; (20) LUPAG Map; (21) South Kohala Community Development Plan Map; and (22) Special Management Area Map.

6. By letter dated September 24, 2015, the Planning Department notified Applicant that it had accepted the Application for filing.
7. The Planning Department circulated the Application for agency comment.
8. By letter dated October 5, 2015, Applicant notified surrounding property owners and lessees of the filing of the Application, and provided information regarding how such owners and lessees could request a contested case proceeding in this matter.
9. By letter dated October 12, 2015, Applicant filed with the Planning Department an Affidavit of Sign Posting and Affidavit of Mailing, attesting to the posting of a sign at the Petition Area notifying the public of the pending application, and notifying the public of the mailing.

10. By letter dated November 24, 2015, the Planning Department notified Applicant that the matter was set for hearing before the Leeward Planning Commission on Thursday, December 17, 2015.
11. Applicant responded to all agency comment letters.
12. By notice dated December 1, 2015, Applicant notified surrounding property owners and lessees of the Planning Commission hearing. Included in that mailing was a copy of the Planning Commission's agenda, and a copy of the form "Petition for Standing in Contested Case Hearing."
13. No petitions for intervention or requests for contested case hearings were submitted in response to the Application.
14. On December 17, 2015, at the West Hawai'i Civic Center, after presentation by Planning Department staff, the Planning Commission considered the Application.
15. The Permit was first amended on February 26, 1999, which amendment included an amendment to Condition No. 12 to extend the life of the permit until December 31, 2018.
16. Applicant requested that Condition No. 12 be amended to allow operations at the quarry to continue until 2043 or longer, i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063.
17. The Planning Director's Recommendation is that Condition No. 12 be amended to read:

The life of this permit shall be for a period co-terminus with the existing license agreement with the owner of the property, or until December 31, [2018] 2043; the

date of completion of the proposed quarrying; or its abandonment, whichever comes first.

18. The Planning Commission's approval of the Application recommended that the Permit be extended until 2043, at which time the Applicant will be required to submit another time extension request to continue operations.
19. The Planning Commission noted that the proposed request to allow the recycling of Portland cement concrete and asphalt concrete pavement, and greenwaste composting activities would be consistent and complementary with the "related uses" that are currently approved under Special Permit No. 833, which includes blasting, drilling, rock crushing and screening, concrete ready-mix batching, pre-casting, asphaltic concrete products manufacturing, equipment storage and materials storage and repair, and other necessary uses and activities related to providing a source of rock aggregate and concrete and asphaltic products.
20. The Planning Commission noted that the allowance of these additional uses will reduce the amount of materials being dumped into the local landfill and will allow those materials to be reused and recycled.
21. The Planning Department also noted Applicant has successfully operated a quarry at the Petition Area for twenty (20) years.
22. The Planning Commission further concluded that approving the proposed amendments to the Permit (a) would not be contrary (i) to the General Plan or the Zoning Code, (ii) the original reasons for granting the Permit, (iii) the objectives sought to be accomplished by

the State Land Use Law, Chapter 205, HRS, and its regulations, (b) are unusual and reasonable uses of land situated within the State Land Use Agricultural District, (c) will not adversely affect the surrounding properties nor unreasonably burden public agencies or infrastructure, (d) did not arise as a result of unusual conditions, trends, or needs since the district boundaries and regulations were established, (e) will not substantially alter or change the essential character of the land and the present use, (f) are consistent with Chapter 205A, HRS, and the Special Management Area guidelines contained in Rule No. 9 of the Planning Commission's Rules of Practice and Procedures, and (g) will not have a significant adverse impact to traditional and customary Hawaiian rights and practices.

23. The Planning Commission also recommended approval of the proposed amendments to the Permit on the ground that the land upon which the proposed uses are sought is unsuited for the uses permitted within the district. The soils for the petition area are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and are unclassified by the Department of Agriculture's ALISH Map.

24. The Planning Department ultimately recommended that the proposed amendments be granted subject to the following revised changes (Material to be deleted is bracketed and ~~stricken~~ and material to be added is underscored):

- a. The Applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
- b. Final Plan Approval for the quarry operation shall be secured from the Planning Department on or before January 19, 1997. To assure adequate plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans for the

quarry operation shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed quarry operations.

- c. The quarry operations and related activities shall commence on or before December 10, 2003. A letter informing of commencement of operations shall be submitted to the Planning Department.
- d. A metes and bounds description and map shall be submitted with plans for plan approval review. The area described shall contain less than 220 acres and the operation confined within the described area.
- e. ~~[Access onto the Waikoloa Road from the project site, including the provision of adequate sight distance, shall meet with the approval of the Department of Public Works prior to final plan approval. Should additional intersection improvements such as channelization be required by the Department of Public Works during the life of the permit, such improvements shall be provided in a timely manner by the applicant at no cost to the County of Hawaii.]~~ At the written request of the Department of Public Works (DPW), after the fifth anniversary of the issuance of the extended permit, the Applicant shall prepare a Traffic Impact Analysis Report (TIAR), at no cost to the County of Hawai'i, for submission to the DPW. The applicant shall coordinate with the DPW on implementing the Applicant's pro-rata share of appropriate traffic mitigation measures, if any, should it be determined through the TIAR that improvements to the Waikoloa/Quarry road intersection

are needed due to the Applicant's activity at the quarry. Access to Waikoloa Road shall comply with Chapter 22 of Hawai'i County Code.

- f. The following procedures shall be instituted for archaeological site mitigation:
 - i. Possible burial sites identified in the Archaeological Inventory Survey (PHRI ms 1041-122091) shall be approved by the Hawaii Island Burial Council prior to receipt of Final Plan Approval.
 - ii. The preservation area, including a 50-foot buffer zone, shall be staked/flagged prior to receipt of Final Plan Approval. A confirming letter from the archaeologist shall be submitted.
 - iii. Construction workers and quarry operational personnel shall be informed of the significance of the staked preservation area. Construction plans shall also note the area.
 - iv. An archaeologist shall be on site to monitor initial land preparation activities that occur in the vicinity of the preservation area.
- g. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walls be uncovered during land preparation activities, work in the area shall immediately cease and the Planning Department shall be notified. No work within the affected area shall resume until clearance from the Planning Department is received.

- h. If required by the Department of Land and Natural Resources, a survey of the area identified as 'Suitable Habitat for the Ophioglossum Fern' in the 'Botanical Assessment' conducted by Winona Char (see Exhibit 1) shall be performed prior to any land alterations of the affected area. The survey and any mitigation measures shall be reviewed and approved by the Planning Department, in consultation with the Department of Land and Natural Resources.
- i. The quarrying activity shall be limited to the hours of 6:30 a.m. to 5:30 p.m. daily; provided active noise generating activity (i.e., blasting, crushing) shall commence no earlier than 7:30 a.m.
- j. The applicant shall submit an Erosion Control and Site Restoration Plan for review and approval by the Planning Director, in consultation with the Department of Public Works, one year prior to the expiration date of the permit or prior to the termination of the operations, whichever occurs first.
- k. Upon termination of the operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding area and rehabilitated as approved in the Erosion Control and Site Restoration Plan. The affected site shall be left in a non-hazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Department and the Department of Public Works for review and approval within ninety (90) days from the date of termination or abandonment.
- l. The life of this permit shall be for a period co-terminus with the existing license agreement with the owner of the property, or until December 31, [2018] 2043; the

date of completion of the proposed quarrying; or its abandonment, whichever comes first.

- m. An adequate supply of water shall be made available for dust control and for fire prevention and pre-suppression.
- n. Comply with all other laws, rules, regulations and requirements, including those of the Department of Health, Hawaii Electric Light Company, and the Department of Public Works.
- o. An annual monitoring report shall be submitted to the Planning Director and Land Use Commission prior to the anniversary date of the approval of this permit. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems and their disposition. Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding properties. The report shall also include Applicant's progress in complying with the conditions imposed.
- p. An extension of time for the performance of conditions within the permit, with the exception of Condition No. 12, may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original

reasons for the granting of the permit, and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

25. No public testimony was received by the Planning Commission. After due deliberation, at its meeting on December 17, 2015, the Planning Commission recommended approval of the Application to the LUC by a vote of 5 in favor and 2 excused.

26. On January 11, 2016, the LUC received a copy of the Planning Commission's decision and the record of the Planning Commission's proceedings on the Application.

27. On January 26, 2016, Applicant submitted to the LUC the \$1,000.00 filing fee by check payable to the State of Hawai'i.

28. On February 1, 2016, the LUC mailed a notice and meeting agenda to all parties and the Statewide, O'ahu and Hawai'i mailing lists.

29. On February 8, 2016, Applicant filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order ("Proposed Order").

30. On February 9, 2016, the LUC met in Kona, island of Hawai'i, to consider the Petition. Jennifer A. Lim, Esq. and Jason Macey appeared on behalf of the Applicant; Daryn Arai and Danny B. Patel, Esq., Deputy Corporation Counsel, appeared on behalf of the County; and, Deputy Attorney General Bryan Yee, Esq., appeared on behalf of OP. The

Commission heard public testimony from Mr. Yee on behalf of OP. At the meeting the Applicant provided a description of the Project relative to Section 15-15-95(c), HAR. Following the presentation by the Applicant, the LUC raised questions about the operation of the Project and its impacts. The County provided a brief overview of its decision recommending approval of the Application and the conditions it imposed.

31. Thereafter, a motion was made and seconded to approve the Application and the County's recommendation, and as agreed to by the Applicant.
32. On February 17, 2016, the LUC mailed out the agenda and notice of hearing for the February 24, 2016, LUC meeting to all parties, and the Statewide, Hawai'i and Maui mailing lists.
33. On February 24, 2016, the LUC conducted a meeting to adopt the form of the Order on this docket at the Maui Arts and Cultural Center in Kahului, Maui. Entering appearances were Mel Macey for the Applicant; and Deputy Attorney General Bryan Yee, Esq., for OP. The County of Hawai'i indicated that it would not be in attendance. The Commission provided an opportunity for public testimony. There was no public testimony.

RULINGS ON PROPOSED FINDINGS OF FACT

Any conclusions of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; and finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

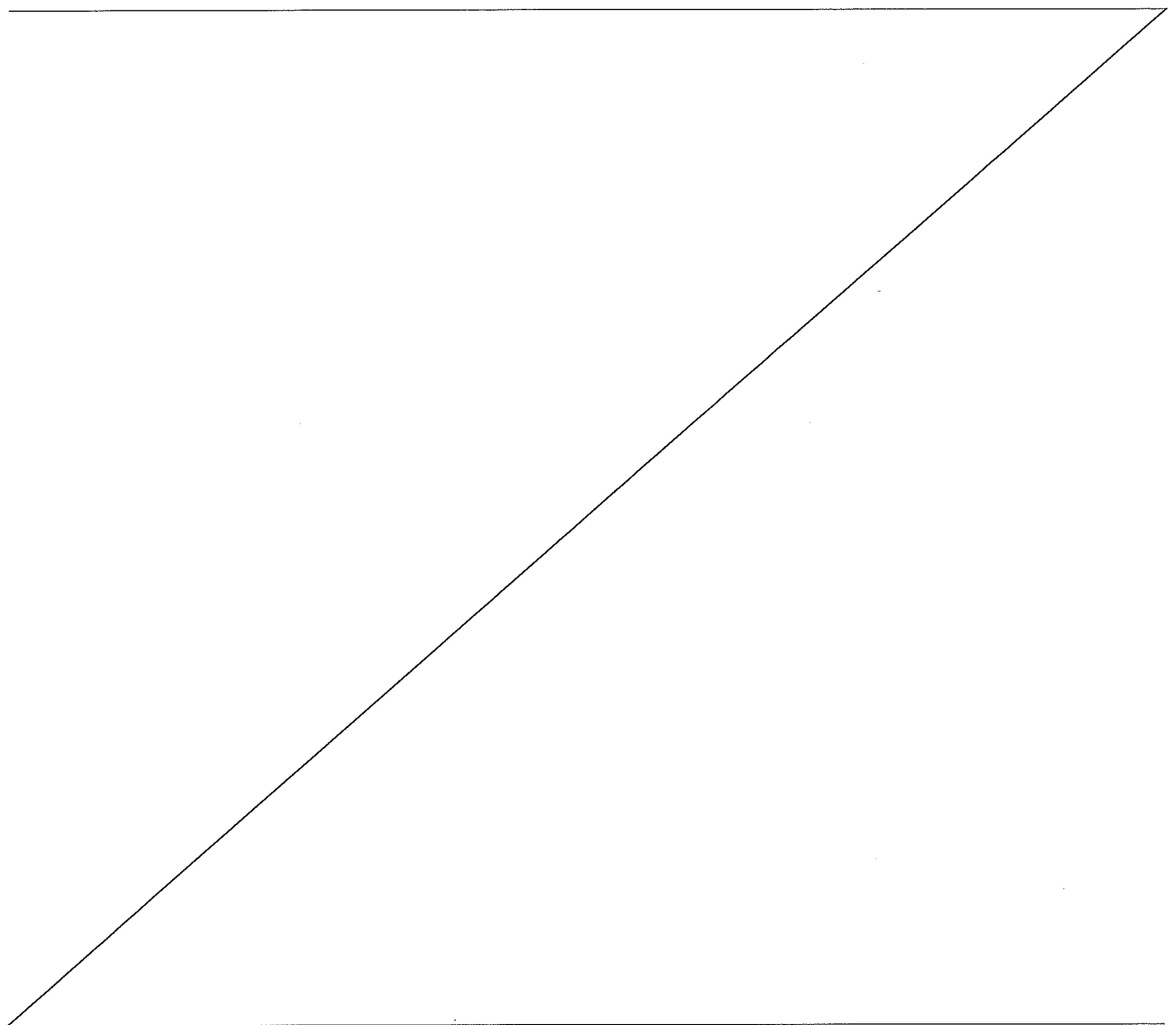
CONCLUSIONS OF LAW

1. The LUC has jurisdiction over this matter pursuant to section 205-6, HRS, and section 5-15-95 *et seq.* HAR.
2. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS and section 15-15-95 *et seq.*, HAR, the LUC finds that the recommendation of the Planning Commission to approve a State Special Permit for the Petition Area, consisting of approximately 219.990 acres of land situated at Waikoloa, South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005), generally meets the guidelines for determining an "unusual and reasonable use" and "would promote the effectiveness and objectives" of chapter 205, HRS, within the State Land Use Agricultural District.
3. The Project constitutes an unusual and reasonable use within the agricultural district other than those for which the district is classified, and complies with section 205-6(a), HRS.
4. The Project constitutes an exceptional situation where the proposed use would not change the essential character of the district nor be inconsistent therewith.
5. The Project constitutes a use that would promote the effectiveness and objectives of chapter 205, HRS, and complies with section 205-6(c), HRS.
6. The Petition Area is not designated as Important Agricultural Land under Part III of chapter 205, HRS, and therefore the Project does not conflict with any part of chapter 205, HRS, and complies with section 205-6(c), HRS.

7. 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.
8. The LUC has considered Article XI, section 1, of the Hawai'i State Constitution and finds that the Project is in compliance and non-violative therewith.
9. 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.
10. The LUC has considered Article XI, Section 3, of the Hawai'i State Constitution and finds that the Project is in compliance and non-violative therewith.
11. 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.
12. The LUC has considered Article XII, Section 7, of the Hawai'i State Constitution and finds that the Project is in compliance and non-violative therewith.
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. *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). The LUC has

considered such responsibilities and obligations and finds the Project to be consistent and non-violative therewith.

14. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa‘akai O Ka‘Aina v. Land Use Commission*, 94 Hawai‘i 31, 7 P.3d 1068 (2000). The LUC has considered such responsibilities and obligations and finds the Project to be consistent and non-violative therewith.



DECISION AND ORDER

Having duly considered the complete record in this matter and the oral arguments presented by the Applicant in this proceeding, together with public testimony from the Planning Department and OP, and a motion having been duly made and seconded at a meeting conducted on February 9, 2016, in Kona, Hawai'i, to approve the recommendation of the Planning Commission, 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 the recommendation of the Planning Commission approving amendments to the State Special Permit for the Project site as proposed by the Planning Commission, and as agreed to by the Applicant, consisting of approximately 219.990 acres of land situated at Waikoloa, South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005), subject to the following conditions:

1. The Applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval for the quarry operation shall be secured from the Planning Department on or before January 19, 1997. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans for the quarry operation shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed quarry operations.

3. The quarry operations and related activities shall commence on or before December 10, 2003. A letter informing of commencement of operations shall be submitted to the Planning Department.
4. A metes and bounds description and map shall be submitted with plans for plan approval review. The area described shall contain less than 220 acres and the operation confined within the described area.
5. At the written request of the Department of Public Works ("DPW"), after the fifth anniversary of the issuance of the extended permit, the applicant shall prepare a Traffic Impact Analysis Report ("TIAR"), at no cost to the County of Hawai'i, for submission to the DPW. The applicant shall coordinate with the DPW on implementing the applicant's pro-rata share of appropriate traffic mitigation measures, if any, should it be determined through the TIAR that improvements to the Waikoloa/Quarry road intersection are needed due to the applicant's activity at the quarry. Access to Waikoloa Road shall comply with Chapter 22 of Hawai'i County Code.
6. The following procedures shall be instituted for archaeological site mitigation:
 - a. Possible burial sites identified in the Archaeological Inventory Survey (PHRI ms 1041-122091) shall be approved by the Hawai'i Island Burial Council prior to receipt of Final Plan Approval.
 - b. The preservation area, including a 50-foot buffer zone, shall be staked/flagged prior to receipt of Final Plan Approval. A confirming letter from the archaeologist shall be submitted.

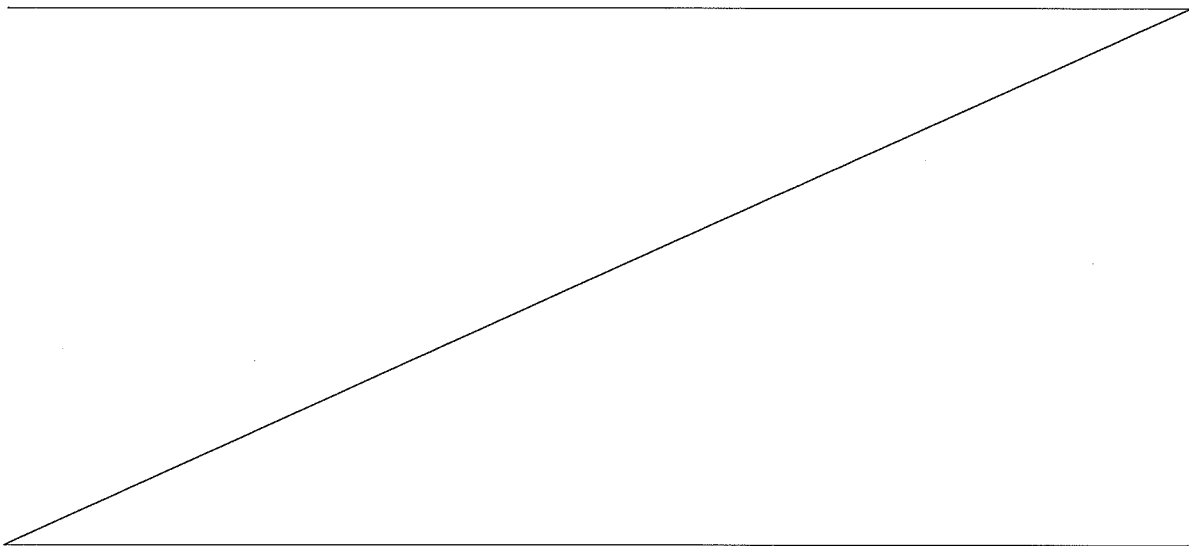
- c. Construction workers and quarry operational personnel shall be informed of the significance of the staked preservation area. Construction plans shall also note the area.
 - d. An archaeologist shall be on site to monitor initial land preparation activities that occur in the vicinity of the preservation area.
7. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walls be uncovered during land preparation activities, work in the area shall immediately cease and the Planning Department notified. No work within the affected area shall resume until clearance from the Planning Department is received.
8. If required by the Department of Land and Natural Resources, a survey of the area identified as 'Suitable Habitat for the Ophioglossum Fern' in the 'Botanical Assessment' conducted by Winona Char (see Exhibit 1) shall be performed prior to any land alterations of the affected area. The survey and any mitigation measures shall be reviewed and approved by the Planning Department, in consultation with the Department of Land and Natural Resources.
9. The quarrying activity shall be limited to the hours of 6:30 a.m. to 5:30 p.m. daily; provided active noise generating activity (i.e., blasting, crushing) shall commence no earlier than 7:30 a.m.
10. The applicant shall submit an Erosion Control and Site Restoration Plan for review and approval by the Planning Director, in consultation with DPW, one year prior to the

expiration date of the permit or prior to the termination of the operations, whichever occurs first.

11. Upon termination of the operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding area and rehabilitated as approved in the Erosion Control and Site Restoration Plan. The affected site shall be left in a non-hazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Department and the DPW for review and approval within ninety (90) days from the date of termination or abandonment.
12. The life of this permit shall be for a period co-terminus with the existing license agreement with the owner of the property, or until December 31, 2043; the date of completion of the proposed quarrying; or its abandonment, whichever comes first.
13. An adequate supply of water shall be made available for dust control and for fire prevention and pre-suppression.
14. Applicant shall comply with all other laws, rules, regulations and requirements, including those of the Department of Health, Hawai'i Electric Light Company, and the DPW.
15. An annual monitoring report shall be submitted to the Planning Director and Land Use Commission prior to the anniversary date of the approval of this permit. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems and their disposition. Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding

properties. The report shall also include Applicant's progress in complying with the conditions imposed.

16. An extension of time for the performance of conditions within the permit, with the exception of Condition No. 12, may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit, and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.



ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 26th, day of February, 2016, per motion on February 9, 2016 in Kona, Hawai'i.

LAND USE COMMISSION

STATE OF HAWAI'I

APPROVED AS TO FORM

Diana Jackson
Deputy Attorney General

By Edmund L. Aczon
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

2/26/16

Certified by:

Daniel E. Orodanker
DANIEL E. ORODENKER
Executive Officer

DUANE KANUHA, Planning Director
DARYN ARAI, Planning Program Manager
County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

(REGULAR MAIL)

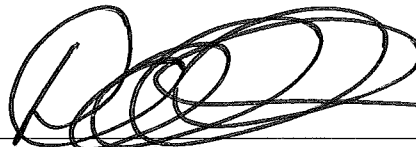
MOLLY A. STEBBINS, ESQ.
DANNY PATEL, ESQ.
Office of the Corporation Counsel
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, Hawai'i 96720
Attorney for Hawai'i County Planning Department

(REGULAR MAIL)

JENNIFER A. LIM, ESQ.
PUANANIONAONA P. THOENE, ESQ.
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813
Attorneys for Applicant –
WHC, Ltd., dba West Hawai'i Concrete

**(CERTIFIED MAIL, RETURN
RECEIPT REQUESTED)**

DATED: Honolulu, Hawai'i _____ February 26, 2016.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

DANIEL E. ORODENKER
Executive Officer



County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

October 6, 2008

Ms. Ann M. Cobb
Kalai Consulting
P.O. Box 383597
Waikoloa, HI 96738

Dear Ms. Cobb:

Special Permit Application (SPP 08-000064)
Applicant: Goodfellow Brothers, Inc.
Request: Construction Baseyard
Tax Map Key: 6-8-1:portion 5

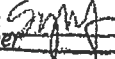
The Planning Commission at its duly held public hearing on September 19, 2008, voted to approve the above-referenced application to allow the establishment of a baseyard to provide equipment and motor vehicle maintenance and repair services and related uses on 14.77 acres of land situated within the State Land Use Agricultural District. The property is located adjacent to the existing Waikoloa Quarry and south of Waikoloa Road, half way between Waikoloa Village and Queen Kaahumanu Highway, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to establish a baseyard to provide equipment and motor vehicle maintenance and repair services for the vehicles and equipment used at the adjacent Waikoloa Quarry and other areas throughout West Hawaii. The baseyard operation would include parts storage and maintenance buildings, general storage and maintenance areas, staging areas (which may include a temporary office trailer), ground-mounted solar panels to provide electricity to the site, a truck scale, and various ancillary uses typically associated with a baseyard. There will be five full time employees. Hours of operation will be from 6:30 a.m. to 5:30 p.m., Monday through Friday. Work may also occur on Saturdays and Sundays.

SCANNED

OCT 07 2008

By: 

Hawai'i County is an Equal Opportunity Provider and Employer

OCT 06 2008

The grounds for approving a Special Permit are based on Planning Commission Rule 6-6. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District. The intent of the State Land Use Law for the Agricultural district is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. The proposed use is considered unusual since it is not agricultural in nature, but it is a reasonable use as the site is not suited for productive agricultural use and the baseyard would serve the existing quarry by providing maintenance and repair services for the quarries equipment and vehicles.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The subject property is not located in an area designated as important agricultural lands and has poor quality soil that is not suited for agricultural use. Thus, this request is not contrary to the objectives of HRS, Chapter 205, which seeks to protect lands that have a high potential of being agriculturally productive from inappropriate development.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G).

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the state for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The proposed baseyard will not adversely affect the preservation and agricultural use of the County's prime agricultural lands because the property is not considered important agricultural land and has poor quality soils. In addition, usually industrial uses such as a baseyard would be better suited in an industrially zones area. In this case, the closest major industrially zoned area is over eight miles away, at Kawaihae Harbor. However, the baseyard will serve an existing industrial use (Waikoloa Quarry) on the property and will reduce the amount of truck traffic on area roadways by consolidating the applicants operations next to the source of their raw

materials that are used for construction. Therefore, the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The permit site is located on a 3,049 acre parcel that primarily consists of barren lava fields. The closest residentially zoned area is about three quarters of a mile to the north of the permit-site. Currently the closest developed area is a utility baseyard located about two miles to the northeast. In addition, the site is not visible from any surrounding developed areas. Due to the remote location of the proposed use, it is not anticipated that the project will adversely impact surrounding properties.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the site is from the quarry access road, which is a privately owned and maintained paved road within a 100-foot right-of-way. A permit was issued in 1996 by the County Department of Public Works for construction of the quarry access road intersection with Waikoloa Road. The applicant has entered into an agreement with the quarry operator to provide private water to the permit site. Wastewater will be disposed of into an individual wastewater system meeting the requirements of the Department of Health. All other public services and utilities are available to the project site. Based on the above, the requested use will not burden public agencies to provide additional services and the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may and have been established. As the use of Waikoloa Quarry has increased, so has the need for maintenance and repair work on the equipment used at the quarry. The establishment of a baseyard would allow the applicant to consolidate its services next to the adjacent quarry, which is its primary area of operation.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils on the property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and are unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Additionally, the U.S.D.A. Soil Survey Report identifies the soil type as Aa Lava (rLV), which is rough broken lava with almost no soil or vegetative cover. Based on the poor soil conditions of the land upon which the proposed use is sought, the applicant has met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The essential character of the surrounding area is barren lava

fields. The permit site is located adjacent to an existing quarry within an undeveloped 3,049-acre parcel and is located over 1,000 feet from the nearest property boundary. Therefore, the proposed use will not alter or change the character of the land.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is located in an area identified as Urban Expansion in the General Plan, which allows for industrial designations of land where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. The proposed use is consistent with the General Plan LUPAG Map, and supports the following goals and policies of the Land Use and Economic elements of the General Plan:

Land Use Element: Industrial

- Industrial activities may be located close to raw materials or key resources.
- Industrial development shall be located in areas adequately served by transportation, utilities, and other essential infrastructure.

Economic Element

- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

The proposed request will strengthen the operation of the existing quarry by providing maintenance and repair services for the quarry vehicles and equipment in close proximity to the quarry. The site is appropriate for the proposed industrial use because the County will not be burdened to provide essential infrastructure to the site. Access to the site is via an existing private road, water is available through an agreement between the applicant and the quarry operator, and electricity will be generated through the use of solar energy. Based upon this information, the applicant's request is consistent with the goals and objectives of the General Plan.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The property is located over three miles from the nearest shoreline and therefore will not likely be affected by coastal hazards and beach erosion or negatively affect coastal ecosystems, marine resources,

public access to the shoreline, and shoreline recreational resources. Professional surveys conducted of the site determined that the proposed baseyard will have no affect on historic, floral or faunal resources. The applicant has stated that there is no public access to the mountains that traverses the property and no view planes or scenic resources that will be impacted by the project. Thus, the proposed request is consistent with the objectives of HRS, Chapter 205A.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: An archaeological assessment survey dated May 2008, by Paul H. Rosendahl, Ph.D., Inc., was submitted with the application. Additionally, a botanical assessment and re-survey report dated May 1992 was prepared by Char & Associates.

The valuable cultural, historical, and natural resources found in the permit area: The botanical assessments did not identify any floral or faunal resources that are customarily gathered by Native Hawaiians. The archaeological assessment survey found no archaeological resources within the project area. Additionally, a comment letter from the DLNR-SHPD dated July 29, 2008 concurred with the survey findings. According to the applicant, there is no evidence of any traditional and customary Native Hawaiians rights being practiced on the site, nor existence of any known valued cultural, historical or native resources on the site.

Possible adverse effect or impairment of valued resources: Previous fauna surveys identified the native Short-eared Owl or Pueo; however the Pueo is a relatively common bird on the island and will not likely be affected by the proposed baseyard. The property does not abut the shoreline; therefore Hawaiian fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: Conditions of approval will be included to require the applicants to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD. To the extent to which traditional and customary Native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights.

Based on the above, the approval of the request to establish a baseyard would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions:

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall submit metes and bounds description of the 14.77-acre permit area by a registered surveyor prior to the receipt of Final Plan Approval. The baseyard operations will be limited to this permitted area.
3. The life of the permit for the baseyard facility shall expire on December 31, 2018, which is when Special Permit No. 833 for the operation of the adjacent Waikoloa Quarry will expire. An amendment to this condition will be required in order for the baseyard use to continue beyond that date.
4. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code.
5. The hours of operation shall be limited to 6:30 a.m. to 5:30 p.m., seven days a week.
6. All exterior signs shall conform to Section 3-12 of the Sign Code, Chapter 3 of the Hawaii County Code, relating to signs in the Agricultural district.
7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
8. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. The baseyard operations shall be conducted in substantial conformance with representations made in the application and to the Planning Commission.

12. Upon compliance with applicable conditions of approval and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

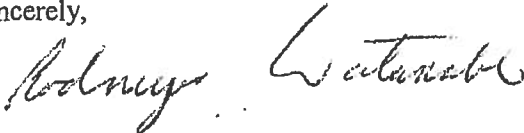
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Ms. Ann M. Cobb

Page 8

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rodney Watanabe".

Rodney Watanabe, Chairman
Planning Commission

Lgoodfellowbrothers01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu

Harry Kim
Mayor



Keith F. Unger, Chair
Oliver "Sonny" Shimaoka, Vice Chair
Nancy Carr Smith
Scott Church
Perry Kealoha
Michael Vitousek
Faith "Faye" Yates

County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

SEP -7 2018

Mr. Sidney M. Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

SUBJECT: Special Permit No. SPP 08-000064
Applicant: Goodfellow Brothers, Inc.
Request: Amendment to Condition No. 3 (Life of Permit) and Addition of
Concrete/Asphalt Batching Plant Use
Tax Map Key: 6-8-001:por. 066

The Leeward Planning Commission, at its duly held public hearing on August 16, 2018, voted to approve the above-referenced request to amend Special Permit No. 08-000064 to amend Condition No. 3 (Life of Permit) and allow the use and operation of a concrete/asphalt batching plant on a 5-acre portion within the previously approved 14.77-acre special permit area on the 243.794-acre property within the State Land Use Agricultural District. The project site is located adjacent to the existing Waikoloa quarry and south of Waikoloa Road, halfway between Waikoloa Village and Queen Ka'ahumanu Highway, Waikoloa, South Kohala, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The baseyard and concrete/asphalt batching plant operations will be limited to this 14.77-acres permitted area, described by metes and bounds description prepared by R. M. Towill on May 23, 2018.
3. The life of this permit for the baseyard facility and the proposed concrete/asphalt batching plant operation shall be for a period coterminous with the life of State Special Permit Docket No. SP92-381, as may be amended from time to time, but in any case no sooner than December 31, 2028.

4. Completion of permitted construction of the proposed concrete/asphalt batching plant and related improvements shall be within five (5) years from the effective date of this permit. Prior to construction, the applicants shall secure Final Plan Approval from the Planning Director in accordance with the requirements of the Zoning Code. A Plan Approval may require a drainage plan. Plans shall identify all existing and proposed structures, signage, fire protection measures, driveway access and parking stalls, outdoor lighting (if any, lighting must be shielded with light directed downwards), landscaping buffer and other improvements associated with the proposed development. Best Management Practices (BMPs) shall be implemented.
5. The hours of operation for the baseyard operation and the proposed concrete/asphalt batching plant shall be limited to 6:30 a.m. to 5:30 p.m., seven days a week.
6. All exterior signs shall conform to Chapter 3 Signs of the Hawai'i County Code, relating to signs in the Agricultural district.
7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
8. The wastewater system, noise from construction activities and operation, method of fugitive dust control, and contributing factors to air pollution for the batching plant and related uses shall meet the standards and requirements of the State Department of Health.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
10. In the unlikely event that any surface or subsurface historic properties and/or resources, such as lava tube openings, concentrations of artifacts, structural remains or human skeletal remains are found during construction activities, the applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and immediately contact the State Historic Preservation Division (DLNR-SHPD) at (808) 933-7651 for further guidance.

The applicant shall also notify the Planning Department immediately after contacting the DLNR-SHPD. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

11. The baseyard operation and the proposed concrete/asphalt batching plant establishment shall be conducted in a manner that is substantially representative of plans and details contained within the amendment Application for Special Permit and the representations made before the Leeward Planning Commission.
12. Upon compliance with applicable conditions of approval and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including any impacts to state waters and fire code.
14. To avoid impacts to Hawaiian hawks, do not clear any brush or trees during the March through September breeding season. If unable to avoid clearing vegetation during these months, conduct surveys for nests prior to any clearing activity and contact the U. S. Fish and Wildlife Service for survey methodology and further recommendations to avoid impacting Hawaiian hawk nests.
15. To avoid impacts to Hawaiian hoary bats, woody plants greater than 15 feet tall should not be removed or trimmed from June 1 to September 15.
16. To avoid impacts to existing listed threatened or endangered plant species, please consult with a qualified botanist to determine any existing unknown plant species. If the qualified botanist determines the find to be a listed plant species, please have a qualified botanist conduct surveys for listed plant species within the project area.
17. The subject property is identified as a Formerly Used Defense Site (FUDS) by the U.S. Army Corps of Engineers, who will manage the investigation, clean-up and long-term monitoring on lands formerly used as an artillery firing range. For more information, please contact the Honolulu District Public Affairs, US Army

Corps of Engineers 808-835-4004/4002,
<http://www.poh.usace.army.mil/Missions/Environmental/FUDS.aspx> or
www.poh.usace.army.mil.

18. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

[Note: Ramseyer version available upon request.]

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Shancy Watanabe of the Planning Department at 961-8144.

Sincerely,



Keith F. Unger, Chairman
Leeward Planning Commission

Mr. Sidney M. Fuke
Planning Consultant
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Enclosure: PC Findings Report

cc w/enclosures: Goodfellow Brothers, Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
State Land Use Commission
DOT-Highways, Honolulu
GIS Section
Planning Department - Kona

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

GOODFELLOW BROTHERS, INC.

AMENDMENT TO SPECIAL PERMIT NO. 08-000064

Based on the following considerations, an amendment to Special Permit No. 08-000064 to amend Condition No. 3 (Life of the Permit) and add the use and operation of a concrete/asphalt batching plant is approved.

GOODFELLOW BROTHERS, INC. has submitted a request to amend Condition No. 3 (Life of the Permit) of Special Permit No. 08-000064 and add the use and operation of a concrete/asphalt batching plant on a 5-acre portion within the previously approved 14.77-acre Special Permit area on the 243.794-acre property within the State Land Use Agricultural District. In 2008, Special Permit No. 08-000064 granted the establishment of a baseyard to provide equipment and motor vehicle maintenance, repair services and related uses within the 14.77-acre portion of the property. The subject property is located adjacent to the existing Waikoloa Quarry and south of Waikoloa Road, halfway between Waikoloa Village and Queen Ka'ahumanu Highway, Waikoloa, South Kohala, Hawai'i, TMK: (3) 6-8-001: portion of 066.

In 2008, Special Permit No. 08-000064 granted the establishment of a baseyard to provide equipment and motor vehicle maintenance, repair services and related uses on the 14.77-acres of land in support of existing quarry operations with the same 243.794-acres property. The applicant is requesting to amend the existing language of Condition No. 3 of Special Permit No. 08-000064 to instead read:

"The life of this permit shall be for a period coterminous with the life of SP 92-391, as may be amended from time to time, but in any case no sooner than December 31, 2028."

Currently, the language for Condition No. 3 of Special Permit No. 08-000064 states,

"The life of the permit for the baseyard facility shall expire on December 31, 2018, which is when Special Permit No. 833 for the operation of the adjacent Waikoloa Quarry will expire. An amendment to this condition will be required in order for the baseyard to continue beyond that date."

On February 26, 2016, the Land Use Commission (LUC) granted West Hawai'i Concrete an extension to the life of their issued State Special Permit Docket No. SP92-381 for the quarry and allowed related activities or uses. Condition No. 12 of the amended State Special Permit Docket No. SP92-381 for the adjacent quarry reads, "*The life of this permit shall be for a period co-terminus with the existing license agreement with the owner of the property, or until December 31, 2043; the date of completion of the proposed quarrying; or its abandonment, whichever comes first.*" As there is a geographical and functional relationship between the operations of the baseyard and quarry, operating on the same property, the applicant is requesting a time extension of its baseyard to run coterminous with the life of the quarry permit or, at the very least, an additional ten (10) years or December 31, 2028. The quarry and the baseyard operations are run by separate businesses. As their operating timetables and objectives may not

coincide, the applicant is requesting flexibility in the condition language regarding the life of the permit. Should the quarrying operation terminate or cease, the applicant could still continue to provide the baseyard operation services to other users.

In addition, the applicant is requesting for the establishment of an asphalt and/or concrete batching plant operation within the existing 14.77-acres baseyard area covered by Special Permit No. 08-000064. According to the applicant, the location of the proposed asphalt and/or concrete batching plant operation would be between the staging area/field office to the north and the equipment storage/lay down area to the south. The plant will consist of a separate control van (office), an approximately 30-foot tall mix surge silo, hot-mix conveyor belt, dust collector, drum mixer, automatic weighing system, cold feed conveyor belt, asphalt pump, asphalt storage tank and cold feed bins. The concept is to use quarried materials from the adjoining site to create asphalt or concrete or both as a mix for roads and other infrastructure. The quarry, baseyard and the concrete and/or asphalt batching plant uses are supportive of infrastructure improvements, such as the Daniel K. Inouye Highway (known as Saddle Road) extension proposed immediately south of the subject site. A benefit of this location is that the quarried materials and the proposed asphalt/concrete batching plant could easily service the construction of the new Saddle Road extension, without negatively affecting the existing Waikoloa Road or other roadways when the time comes. The proposed hours of operation will be similar to the quarry hours, limited to 6:30 am to 5:30 pm, seven days a week. There will be three (3) employees. Upon securing all required permits, the applicant hopes to start construction within six (6) months of the amendment to this Special Permit.

Planning Commission Rule 6-7 provides the criteria for approving a Special Permit, while Rule 6-9 provides the criteria for granting an amendment of permit or conditions for Special Permits. Rule 6-7 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The granting of the proposed request would be consistent with the objectives sought to be accomplished by the Land Use Law and Regulations, and is an unusual and reasonable use of land situated within the State Land Use Agricultural District. In recognizing that lands within the Agricultural district may not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The proposed amended use is considered unusual since it is not agricultural in nature, but it is a reasonable use as the site is not suited for productive agricultural use. Further, the existing baseyard continues to serve the existing quarry by providing maintenance and repair services for the quarries equipment and vehicles. The proposed operation of a concrete/asphalt batching plant would complement the existing quarry and baseyard uses. Therefore, the proposed request is considered an unusual and reasonable use of the agricultural land.

The granting of this request will promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the state for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i. The property is situated on land characterized as lava flows, 'A'ā (rLV). This is rough, broken lava that has practically no soil covering and is bare of vegetation. In areas of high rainfall, it contributes substantially to the underground water supply and is used for watershed. Soils within the project site are classified as "E" or "Very Poor" for agricultural productivity and as unclassified by the Department of Agriculture's Agricultural Lands of Importance to the State of Hawai'i (ALISH). Two (2) tributaries from the non-perennial Hopeaia Stream traverse the subject property in three (3) separate areas and flows down in the northwest direction away from the existing 14.77-acre Special Permit No. 08-000064 area, which is over 600 feet away to the west from the nearest tributary. Any project and its potential impacts to State waters must meet State and Federal rules and regulations. Conditions of approval will require the applicant to comply with regulations regarding impacts to state waters. According to the applicant, the anticipated uses would occur during the weekdays, when ambient noise from traffic and other sources already permeate the area. There are compatible uses occurring adjacent to the quarry. The applicant would need to meet the requirements of the State Department of Health (DOH) for noise impacts. Conditions of approval will require the applicant to comply with health regulations for noise impacts. Emissions from vehicular and natural sources, such as the volcanic haze from the Kīlauea Volcano, affects the air quality in the subject area. According to the State DOH, the applicant would need to meet the requirements of the DOH Air Pollution Rules, Chapter 60.1, Title 11, State of Hawai'i for the proposed quarry operations. Conditions of approval will require the applicant to comply with health regulations for air impacts.

The proposed use will not displace any existing agricultural activity and does not consist of prime agricultural lands. Thus, the proposed request will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5)(A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. Based on the previous discussion listed above, the proposed request is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation and agricultural use of the County's agricultural lands.

(B) The desired use would not adversely affect surrounding properties.

The existing improvements consists of the two (2) Special Permits issued for the subject 243.794-acre property. Special Permit No. 08-000064 consists of the 14.77-acre area for this amendment request. Special Permit No. 833 consists of an approximately 219.990-acre portion of the subject property for a quarry operation with related improvements. The subject property is in the Formerly Used Defense Sites (FUDS)

Boundary of the former Waikoloa Maneuver Area. The U.S. Army Corps of Engineers will manage any investigations, clean-up and long-term monitoring on lands formerly used as an artillery firing range. For more information, please contact the Honolulu District Public Affairs, US Army Corps of Engineers 808-835-4004/4002, <http://www.poh.usace.army.mil/Missions/Environmental/FUDS.aspx> or www.poh.usace.army.mil. The subject property is in the drier climate of Waikoloa on the existing lava fields, at an elevation of about 700 feet that slopes very gently in the makai (ocean) direction. Electric, telephone and cable overhead lines are along the southern property boundary. In 2016, the landowner received a final inspection for a rock wall entry monument with signage installed on the subject property. To the south is an undeveloped agriculturally-zoned property. Undeveloped lands to the east are zoned Open. To the north of Waikoloa Road, lands are mixed zonings (A-5a, RA-1a and Open) with an existing and unfinished residential project under review. To the west, a permitted heliport and a permitted wastewater treatment plant are within two miles of the subject property.

According to the applicant, access from the fully-improved Waikoloa Road, which provides sufficient off-site parking and reasonably good visibility to and from the site from Waikoloa Road. The batching plant anticipates no more than a maximum of fifteen (15) trips on a real busy day, beginning at 7:30 am and ending at 3:30 pm, averaging about two (2) movements per hour. As such, the applicant sees no need for additional road improvements. As of this writing, the Planning Department received concerns from one constituent, Mark Gordon. The applicant provided a written response to the constituents concern. Based on the above discussions, the proposed uses are not anticipated to have a substantial adverse impact on the surrounding properties. However, any possible impacts can be minimized through conditions of approval.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The proposed request will not burden public agencies to provide additional services. Access to the property is from Waikoloa Road, a two-lane paved County roadway, onto a private quarry access roadway, which has a 24-foot paved width and paved shoulders within a 100-foot right-of-way. Telephone, internet and cable services are available to the site. An existing solar system with supporting backup generator provides electricity to the baseyard. The applicant will obtain necessary permits to expand the existing solar system, as the need arises. Police and Fire services are available in Waikoloa, located about three (3) miles away from the subject property. The Fire Department requires compliance with the Fire code and regulations.

There is an existing water agreement between the applicant and the quarry operator to obtain water from an existing private water line located along the quarry access road. As the project will not require extensive use of the water system, the applicant anticipates nominal usage for potable and some dust control measures. In their June 13, 2018 memo, the Department of Water Supply (DWS) stated that the subject parcel is not within the Department's service limits. The nearest adequate point of connection is from an existing 16-inch waterline within North Kanikū Drive, approximately three (3) miles from the parcel. Further, the water system in the area is privately owned and operated. Therefore, the DWS have no objection to the applicant's request as the subject parcel is not within their existing service limits.

In their June 5, 2018 memo, the State Department of Health (DOH) indicated that the applicant would need to meet the permit requirements of the DOH Air Pollution Rules, Chapter 60.1, Title 11, State of Hawai'i for the proposed quarry operations, and encourages the applicant to contact their Clean Air Branch to discuss those requirements. The DOH recommends that the applicant review all of the Standard Comments on their website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html> and adhere to comments specifically applicable to the proposed project. The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) by Built Environment Working Group (BEWG) of the DOH, and encourages the applicant to apply the healthy built environment principles. In a June 5, 2018 letter, the State DOH stated that the facilities are no longer considered "temporary". The DOH requires a wastewater system that meets their regulations. In a June 22, 2018 letter, the applicant responded that the DOH approved a septic system for the office building. Should the DOH require an upgrade of the septic system, then the applicants will update the existing system in conjunction with the "As-Built" building permit process for the existing structure.

The applicant submitted a Solid Waste Management Plan to the Department of Environmental Management for their review and approval. According to the applicant, the proposed uses will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

In a June 4, 2018 memo, the Department of Public Works (DPW) stated that the subject property is located in Zone "X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawai'i County Code. In a June 22, 2018 letter, the applicant responded that all grading and/or excavation activity will meet the requirements of Chapter 10, Erosion and Sediment Control.

The subject property is in the lava-flow hazard zone three (3), which the U.S. Geological Survey (USGS) designates as areas less hazardous than zone 2 because of greater distance from recently active vents and/or because of topography. One to five percent of zone 3 has been covered since 1800, and 15 to 75 percent has been covered within the past 750 years. Based on the above, the proposed request will not burden public agencies to provide additional services.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to the Hawai'i Revised Statutes (HRS) Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The subject property and surrounding areas are designated for agricultural uses by both State and County land use laws. The proposed request to amend an existing condition and establish the unusual and reasonable use and operation of a concrete/asphalt batching plant on a 5-acre portion within the previously approved Special Permit area on the subject property is in line with the intent for allowing the issuance of a Special Permit.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on land characterized as lava flows, 'A'ā (rLV), classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. Although the soil is suited for uses permitted within the Agricultural district, the applicants were not actively pursuing any agricultural activities in the location of the proposed request. Thus, the proposed uses will not displace any active or potential agricultural activity on the property.

(F) The proposed use will not substantially alter or change the essential character of the land and the present use. According to the applicant, all of the needed improvements with the requested uses already exist on the site. Thus, the approval of this amendment request should not result in the substantial alteration or change in the essential character of the land and the present use. The applicant has no plans to make further improvements to the site. Aside from creating a flat surface, the proposed concrete/asphalt batching plant will not require significant structure improvements. The property itself has been committed to quarrying and baseyard activities, both considered industrial-type uses. The approval of a batch plant on the same property will be a complimentary one that will not detract from, nor conflict with, the current industrial character already established for this property. Therefore, the proposed request will not substantially alter or change the essential character of the land or its present use.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County, and designates the subject property as Urban Expansion. This allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. The approval of the request would support the goals and policies of the Land Use and Economic elements of the General Plan.

Land Use Element

- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- Establish controls to insure orderly development and minimize speculation of commercially zoned lands.

Land Use Element - Industrial

- Industrial activities may be located close to raw materials or key resources.
- Industrial development shall be located in areas adequately served by transportation, utilities, and other essential infrastructure.

Economic Element

- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

The South Kohala Community Development Plan, adopted as Ordinance No. 08 159 by the Hawai'i County Council, identifies the subject property for urban expansion use.

The proposed amendment is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. Under the Coastal Zone Management Program, the County regulates the Special Management Area. Located over three (3) miles from the nearest shoreline, the subject property is outside of the SMA and tsunami evacuation zone. According to the applicant, the proposed amendment will not negatively impact any view planes or scenic resources for existing ocean views from Waikoloa Road. Likewise, the proposed amendment will not negatively impact the existing views of Mauna Kea and Mauna Loa from Waikoloa Road. The Hawai'i County General Plan does not list the subject property as a distinctive and identifiable landmark. According to the applicant, there are no known public access to the mountains or the shoreline that traverses through the property. Therefore, the proposed uses will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Due to the elevation and distance from the ocean, the applicant does not anticipate any coastal hazards or beach erosion to affect the subject property.

No formal floral or faunal study or archaeological study was submitted with this application. The Office of Environmental Quality Control website posted a March 30, 2017 Draft Environmental Impact Statement (EIS) for the Saddle Road Extension that included the subject property. For that project, the U.S. Fish and Wildlife (USFWS) commented that the following listed species have been observed in the vicinity: endangered Hawaiian goose (*Branta sandvicensis*; nēnē), endangered Blackburn's sphinx moth (*Manduca blackburni*; BSM), endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), threatened Hawaiian hawk (*buteo solitarius*), and listed plant species. To avoid and minimize impacts to these species, the USFWS provided their recommendations. The USFWS also cautioned that the project is located on the dry leeward side of West Hawai'i, where wildland fires may affect endangered species and critical habitat. Measures for wildland fire prevention and suppression should be included in project planning. Conditions of approval will require the applicant to address minimizing impacts to endangered species and measures for wildland fire prevention and suppression.

On April 15, 2008, PHRI conducted an Archaeological Assessment Survey for the proposed baseyard site. The report concluded that no archaeological sites were encountered during the survey and recommended that a "no effect" determination be made by the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD). On July 29, 2008, DLNR-SHPD concurred with the survey findings and determined that no historical properties would be affected by the proposed construction baseyard. Based upon archaeological and cultural surveys performed over the last 30 years in and around the area, there is no evidence of traditional and customary Native Hawaiian rights being practiced on the property. The State Historic Preservation Division's (SHPD) List of Designated Historic Places state or national registries does not include the subject property. Conditions of approval will require that language in the unlikely event of discovering historic properties during construction activities meets

current practices. The Planning Director recommended deleting a portion of the language in Condition No. 2, as the applicant provided the 14.77-acre metes and bounds description prepared by a registered land surveyor. The applicant requested that the language for Condition No. 3 instead read as originally submitted in their application. The applicant reasoned that their original language would allow flexibility in the life of the permit to be a minimum of ten (10) years independent of the life of the permit for the adjacent quarry on the subject property, instead of being exclusively coterminous. As presented before the Planning Commission, this meant that if for any reason, should the quarry operation cease, then the applicant would also have to cease their operation, which was not the intent of the applicant. The Planning Commission considered this and approved the language change for Condition No. 3 to read as originally submitted by the applicant. The applicant also requested clarifying the language in Condition No. 8 by removing the word quarry, as this request is not for the quarry but for the batching plant and related uses. The Planning Commission considered this and approved the condition language correction. The Planning Commission also considered and approved a correction in the language for Condition No. 14 relating to avoiding impacts to Hawaiian hawks.

According to the applicant, there are no known public access to the mountains or the shoreline that traverses through the property.

Therefore, the proposed uses are not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes. The applicants will be required to comply with all agency requirements and stated conditions of approval.

Lastly, this recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable County, State and Federal governmental requirements in connection with the approved use, prior to its commencement and during its operation upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), compliance with State Health Department environmental/sanitation/health-related regulations, drainage plan, among many others. Compliance with all applicable governmental requirements is a condition of this approval, and failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department, Planning Commission and/or the affected agencies.

Based on the above findings, the request to amend Condition No. 3 (Life of the Permit) of Special Permit No. 08-000064 would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations or the original reasons for approving this permit.