

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
WAIKOLOA DEVELOPMENT COMPANY )  
 )  
For a Special Permit to Allow the )  
Establishment of a Quarry )  
Operation and Related Uses on )  
Approximately 219.990 Acres on )  
Land Situated Within the State )  
Land Use Agricultural District at )  
Waikoloa, South Kohala, Hawaii, )  
Tax Map Key No.: 6-8-01: 5 (por.) )  
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DOCKET NO. SP92-381

WAIKOLOA DEVELOPMENT  
COMPANY

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

JAN 19 1993

Date

by

*Robert L. ...*  
Executive Officer

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER

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LAND USE COMMISSION  
STATE OF HAWAII

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER

Waikoloa Development Company (hereinafter "Applicant") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended (hereinafter "HRS"), and Subchapter 12 of the Hawaii Land Use Commission Rules. The Land Use Commission (hereinafter "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Special Permit application (hereinafter "Permit") to allow the establishment of a quarry operation and related uses was filed by the Applicant with the County of Hawaii Planning Department (hereinafter "Planning Department") on January 14, 1992.

2. The Hawaii County Planning Commission (hereinafter "Planning Commission") conducted a public hearing on the Permit on September 22, 1992, pursuant to notice published in the Hawaii Tribune-Herald and West Hawaii Today, on September 10, 1992. At the Planning Commission hearing, testimony was presented by Mr. Tim Newstrom who raised concerns over the potential impacts of the proposed quarry on archaeological sites in the area as well as the potential impact upon groundwater resources from oil and other pollutants used in the operation of the quarry during periods of flashfloods.

3. On September 22, 1992, the Planning Commission recommended approval of the Permit to the LUC subject to 16 conditions. The LUC received the record of the County's proceedings on the Permit on October 6, 1992.

4. At its meeting on the Permit on November 12, 1992, the LUC accepted into evidence a request to be a public witness from Elsbeth B. McKeen, Esq., on behalf of Ernestine and Glen Felton of Kawaihae Concrete. At the meeting, Mr. Felton testified as a public witness in opposition to the Permit.

#### DESCRIPTION OF THE PROPERTY AND SURROUNDING AREAS

5. The Permit area is located approximately two miles southeast (mauka) of the Queen Kaahumanu Highway - Waikoloa Road intersection and 4,000± feet to the southwest of the Waikoloa Road between the 700 and 1,000 feet elevations. The Permit area, approximately 219.990 acres, is part of a 3,049.994 acre parcel

of land and is identified as TMK No. 6-8-01: 5 (Por.)  
(hereinafter "Property").

6. The area to the south of the Property is owned by the State of Hawaii and is designated as the Puu'anahulu Natural Resource Management Area, approximately 20,444.831 acres in size. The Property is approximately two miles southwest of the Waikoloa Village Subdivision development. Waikoloa Beach Resort is located approximately five-and-a-half miles to the west (makai).

7. Slopes in the area vary from 0 to greater than 20 percent.

8. Rainfall in the area averages 10 inches annually.

9. The Soil Conservation Service Soil Survey Report classifies the Property as Lava Flows Aa (RLV).

10. The Land Study Bureau's Overall Master Productivity Rating system classifies the soils of the Property as "E" or Very Poor.

11. The Property is unclassified by the State Department of Agriculture's (hereinafter "DOA") Agricultural Lands of Importance to the State of Hawaii map.

12. According to the Flood Insurance Rate Map, the Property is within Zone X, an area outside of the 500-year floodplain.

13. To the east of the Property is the existing mauka quarry consisting of the Pu'u Hinai Quarry (site 1) and the Village Quarry (site 2). By Decision and Order issued on

March 6, 1991, the LUC approved an amendment to Special Permit No. SP70-85, which 1) extended the life of the Special Permit for both sites from December 11, 1990 to December 11, 1995; 2) reduced the size of site 1 from 69 acres to 63.6 acres; and 3) reduced the scope of quarrying activities at site 2 by deleting rock crushing and asphalt and concrete batch operations as permitted activities and allowing only the removal of existing stockpiled materials and equipment storage and repair, subject to ten conditions. Site 1 would be quarried for cinder and topsoil primarily for the construction and landscaping of the Waikoloa Highlands Golf Course.

14. To the west of the Property is the makai quarry (SP No. 71-117), which by Decision and Order issued December 20, 1991 received a three-year time extension to the life of the Special Permit to December 17, 1994.

#### DESCRIPTION OF THE PROPOSED USE

15. The establishment of a new rock quarry will permit the Applicant to replace the existing active quarry uses at both the mauka site 1 and makai quarries. These two quarries are gradually being phased out due to the expiration of earlier special permits, expanded resort and residential construction needs and adverse visual concerns. The proposed quarry will also enable the owner, Waikoloa Land and Cattle Company, to consolidate equipment and resources from the two existing quarries to a single site.

16. Operations of the quarry will involve 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 asphaltic products.

17. Applicant anticipates that average production of aggregates produced will be approximately 10,000 to 15,000 tons per month; concrete products approximately 10,000 to 12,000 cubic yards per month; and asphalt products approximately 3,000 and 5,000 tons per month.

18. Access to the quarry is proposed to be off Waikoloa Road at Station 486 + 00, where sight distance requirements can be met. Improvements within the Waikoloa Road right-of-way would include a paved two lane access road, with wide radii to accommodate turning motions. The access road from the intersection at Waikoloa Road to the quarry manufacturing area would have a gravel surface.

19. Inasmuch as the proposed quarry is centrally located within the Waikoloa and Kohala Coast region, it is anticipated that materials transporting costs for projects in South Kohala will decrease.

20. The Permit is to allow the quarry operation to the year 2010. Applicant estimates that the quarry operation will cost approximately \$1 million to put into operation, taking

approximately 6 to 12 months. Annual operating costs are estimated to be approximately \$1.5 million.

21. Operating hours of the proposed quarry will be generally from 6:30 a.m. to 5:30 p.m.

#### STATE AND COUNTY PLANS AND PROGRAMS

22. The State Land Use District Map designates the Property in the Agricultural District.

23. The General Plan Land Use Pattern Allocation map designates the Property as Urban Expansion.

24. The Property is situated within the County of Hawaii's Unplanned Zoned District.

25. The Property is not located within the Special Management Area of the County of Hawaii.

#### SUMMARY OF STATE AND COUNTY AGENCY COMMENTS

26. The County of Hawaii Tax Office had the following comments on the Applicant's request (Exhibit 5):

- "1. There are no delinquent taxes due on the above mentioned parcel.
- "2. The above mentioned parcel is not in the agriculture use or agriculture dedication program."

27. The Department of Transportation, Highways Division commented that the Applicant "shall participate in their pro rata share of future highway impacts and improvements" (Exhibit 6).

28. The Mauna Kea Soil and Water Conservation District offered the following comments on the Applicant's request (Exhibit 7):

- "1. A site reclamation plan is needed for this site.

- "2. Operation of this site should be contingent upon adequate restoration of the two previously worked sites.
- "3. An adequate plan to control dust should be prepared. Continuous operation of the quarry should be contingent upon the operators (sic) ability to control adverse environmental effects."

29. The County of Hawaii Department of Water Supply commented that "...the water system in the area is privately owned and operated. The private water purveyor should be contacted for any water concerns" (Exhibit 9).

30. The State Department of Health (hereinafter "DOH") offered the following comments on the Applicant's request (Exhibit 10):

"The applicant would need to meet the permit requirements of our Department of Health Air Pollution Rules, Chapter 60, Title 11, State of Hawaii for the proposed quarry operations."

31. The Office of State Planning offered the following comments on the Applicant's request (Exhibit 11):

"We have reviewed the request to close two existing quarries and establish a new quarry operation on a site of about 220 acres approximately two miles to the south of Waikoloa Village. Mauna Lani Resort and Waikoloa Beach Resort are located approximately four miles to the west. It is our understanding that the new quarry operations will include blasting, drilling, rock crushing and screening, concrete ready-mix batching, pre-casting, asphaltic concrete products manufacturing, and related and accessory uses and activities. We have the following comments to offer regarding the special permit request within the State Agricultural District.

"We are concerned about possible adverse impacts on air quality and noise from quarry operations relative to surrounding residential and resort developments. The mitigation measures described in the document appear to be incomplete and should be expanded to include specific measures to control dust and other emissions. Noise impacts

resulting from blasting in the quarry and visual impacts should also be addressed in more detail."

32. Hawaiian Electric Light Company (hereinafter "HELCO") offered the following comments on the Applicant's request (Exhibit 12):

- "1. The area is served from our 5.0 MVA Waikoloa distribution substation which is not adequate to serve the subject project. A new distribution substation is required close to the 'E-2' easement between HELCO's Waikoloa and Anaehoomalu substations.
- "2. A substation site must be deeded to HELCO. This site should be located close to the existing 69,000 volt line along easement 'E-2.'
- "3. The developer's electrical consultant must submit plans and calculations to limit the voltage flicker on the HELCO electrical facilities below 2%. HELCO will provide the driving point impedance at the substation 69,000 volt interconnection.
- "4. Due to the long lead time required to purchase and install the distribution substations, the developer's electrical consultant is urged to contact HELCO as soon as practicable to discuss the project schedule.
- "5. We strongly recommend that energy efficient and conservation features suitable to reduce the peak electrical demand be a part of the development's plans and requirements. We recommend that this development take full advantage of waste heat recovery equipment to recycle and reuse the waste heat rejected by air conditioning and refrigeration equipment. Other energy saving devices such as fluorescent lighting and sodium lighting for parking lot and roadway lighting are also recommended.

"In addition, HELCO is a participant in the Public Utilities Commission, Docket 6617, on Integrated Resource Planning (IRP). The IRP process is to develop, implement, monitor and evaluate utility resource plans that identify the optimum mix of energy resources for meeting forecasted levels of energy needs. Demand-side options include activities designed to influence customers' use of electricity in ways that will produce desired changes in load shape which can delay the addition of supply-side options."

33. The County of Hawaii Department of Public Works offered the following comments on the Applicant's request (Exhibit 13):

- "1. Any buildings shall conform to all requirements of codes and statutes pertaining to building construction.
- "2. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- "3. The driveway access to Waikoloa Road must conform to Chapter 22 of the Hawaii County Code. The sight distance must meet the requirements of the Statewide Design Manual. A driveway permit will be required.
- "4. The area is in FIRM Zone 'X'."

34. The Division of Forestry and Wildlife (hereinafter "DFW") of the Department of Land and Natural Resources (hereinafter "DLNR") offered the following comments on the Applicant's request (Exhibit 14):

"The site of the proposed quarry is adjacent to the Puu Anahulu Game Management Area. Our primary concern is the potential fire hazard resulting from quarry and related uses. Appropriate prevention and presuppression measures, and suppression plan to suppress potential fires need to be adequately addressed. Although there may be very little vegetation found on the project site as stated on page 6, conditions can change with the invasion of fountain grass.

"With regards to 'Flora', no mention of surveys or studies are mentioned. Was a botanical survey conducted to ascertain that 'no rare, threatened or endangered flora species exists?' If not, a botanical survey even in areas of sparse vegetation is prudent, to prevent potential conflicts in the future.

"Sanitation measures to prevent a build-up of predators such as the mongoose, dogs, cats and rats need to be addressed, as they adversely impact game birds."

35. The Division of Water Resources Management of DLNR offered the following comments on the Applicant's request (Exhibit 14):

"Although this quarrying and concrete mixing plant operations will be in an isolated area, mitigative measures for dust control and groundwater contamination should be considered to protect the environment. The EA should address these measures."

36. In response to earlier concerns expressed by the Historic Preservation Division (hereinafter "HPD") of DLNR regarding the archaeological survey prepared for the proposed quarry (Exhibit 15) and the Applicant's archaeologist, Paul H. Rosendahl, Ph.D., subsequent letter to HPD to address those concerns (Exhibit 22), HPD provided the following (Exhibit 41):

"....The letter contained sufficient information, including a USGS map showing the location of the project area, to allay our concerns and hence, we can agree that the inventory survey recorded all the historic sites in the subject parcel.

"Nineteen (19) historic sites consisting of 27 archaeological features were recorded. We concur with the significance evaluation of the historic sites, 5 solely for their information content, and 14 sites (one trail and 13 possible burials) for their information content and traditional cultural significance.

"The report states that the Waikoloa Development Company prefers to preserve all 19 historic sites 'as is', and we agree this is an acceptable mitigation plan and will result in 'no adverse effect' to these sites. Our Hawai'i Island Burial Council will need to vote on the proposal to preserve these sites, in accordance with Chapter 6E (H.R.S.), but we anticipate approval.

"To ensure the mitigation commitment is carried out, the conditions outlined in the report (pages 20 and 22) need to be met. We reiterate these conditions:

- "1. A 50-foot buffer zone should be flagged in the field around the margins of the ridge line containing the 19 sites;
- "2. Construction workers and appropriate Waikoloa personnel should be informed of the significance of the flagged preservation boundary which should also be clearly identified on project area maps and aerial photographs;
- "3. Additional pedestrian survey is necessary in the event development is to occur within either (a) the area identified in Enclosure 1 as 'proposed site buffer' area - the area containing all 19 sites presently identified within the project area, or (b) the northeastern portion of the project area containing a developed ridge line identified in Enclosure 1 as 'additional pedetrain (sic) survey required id (sic) impacts are to occur.'

"In addition to these 3 conditions, our office would also (sic) recommend that an archaeological monitor be also (sic) present in the project area when initial land modifications, such as surface grading, are being conducted along the edges of the buffer zone enclosing the preserved district. This will ensure that the development activities will not infringe into the preserved area."

37. The County of Hawaii Police Department, Civil Defense Agency, Department of Parks and Recreation, Fire Department, DOA, and the Waikoloa Community Association had no objections or comments on the Permit.

#### SOCIO-ECONOMIC IMPACTS

38. The proposed quarry will have positive long-term socio-economic impacts such as continued employment opportunities. The federal, state, and county governments will indirectly receive income through taxes paid by those involved directly and indirectly with the quarry operation. The materials quarried from the project will be used in development that will

provide new housing as well as recreational and commercial facilities.

## IMPACTS UPON THE RESOURCES OF THE AREA

### Agricultural Resources

39. The Property is composed of vacant lava land. The Property has poor productivity potential for most agricultural uses.

### Flora and Fauna

40. In response to concerns expressed by DFW, a "Botanical Assessment" of the Property dated May 1992 was prepared by botanist, Winona Char of Char & Associates. The botanist found no rare, threatened, or endangered species of flora on the Property. The botanist suggested that the pololei fern (Ophioglossum concinnum), a candidate endangered species, may occur on a portion of the weathered pahoehoe lava flow on the Property. Due to the ephemeral nature of the species, it was not detected during the assessment. The botanist recommended two options to address the potential existence of the species:

1) Reconfigure the quarry manufacturing area so that all of it is sited on a'a lava; 2) Delay construction on the pahoehoe area until another survey can be conducted during the rainy season.

41. The Short-eared Owl or Pueo, which is an endemic land bird, was observed in the area. No indigenous land or sea birds were recorded. Exotic birds such as the Ring-necked Pheasant, Erckel's Francolin, California Quail, Japanese Quail,

Barn Owl, Yellow-billed Cardinal, Northern Mockingbird, Saffron Finch, Lavender Waxbill, House Finch, and the House Sparrow are expected to be found on the Property. These birds are more transient in nature rather than residents of the Property.

#### Scenic Resources

42. The proposed quarry may minimally impact views from the Waikoloa Beach Resort and Queen Kaahumanu Highway toward Mauna Kea. The proposed quarry would not be visible from Waikoloa Road or Waikoloa Village because it is screened by a bluff and is distant from the road and village. Impacts from the proposed quarry operation will be reduced by means of buffer zones and earth berms.

43. Upon closure of the quarrying operations, the Property will be reshaped to blend in with the natural landforms surrounding the area.

#### Archaeological and Cultural Resources

44. An "Archaeological Inventory Survey" of a 300 acre area, inclusive of the Property, was prepared by Paul H. Rosendahl, Ph.D., Inc. The archaeologist found 19 prehistoric and early historic sites. These sites are located along the margins of two well-developed ridges immediately north of the Property. The sites are composed of the following feature types: platforms, terraces, modified outcrops, mounds, paved areas, modified sink, filled lava blister, rock shelters, and a trail. The feature types were assessed to have the following functions:

possible burial, temporary habitation, transportation, possible potable water enhancement, and indeterminate. No artifacts, midden, or other portable cultural materials were identified at or in the vicinity of any of the sites.

45. Five of the sites identified are assessed as significant solely for information content and further data collection is recommended if the sites are to be impacted by the quarry operations. Thirteen of the sites are assessed as significant for information value and potentially culturally significant because each may contain one or more burials. One site is assessed as significant for information and cultural values. This site is a trail that clearly provides access to possible burial features.

46. The proposed quarry will not affect any of the significant sites since the sites are to be preserved as an archaeological cluster and no construction or quarrying is to take place in the cluster. The archaeological cluster is located along a lava ridge, which will serve as a natural visual barrier and buffer between the proposed quarry operation and Waikoloa Road.

47. The Applicant will preserve all nineteen sites.

#### ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

##### Highways and Roadway Facilities

48. Access to the development will be from Waikoloa Road, which has an 80-foot right-of-way with a pavement width of

22 feet, and then along a gravel-surfaced driveway to the site. Traffic created by the proposed quarry operation will be less than or equivalent to that from the consolidation of the two existing quarries. This traffic will primarily consist of trucks used to transport materials from the quarry. Employee traffic will be minimal.

49. Transporting materials within the region would have an impact on the roadway system inasmuch as trucks hauling heavy loads such as rock material will tend to slow down traffic flow, as well as add to the deterioration of the roadways. The proposed quarry will be centrally located within the region, which should minimize the distance and consequently the time the trucks will be on the road.

#### Drainage

50. The Property consists of basaltic lava flows that are highly permeable and allow for much of the rainfall to percolate into the ground. The Property is located on the arid side of the island and the average annual rainfall is less than 20 inches. The region is not subject to frequent heavy rainfalls. The likelihood of surface runoff is very slight. No well-defined drainageways exist on the Property.

#### Air Quality

51. Long-term adverse impacts on air quality are expected during the operation of the proposed quarry. The quarry operation will emit air pollution in the form of dust from blasting, drilling, rock crushing, and transport of materials.

Heavy machinery, which are gasoline- or diesel-powered, will be used in quarrying and transport and will create dust and exhaust emissions.

52. Due to the long distances of the nearest communities, dust or airborne pollutants from the quarry operation will dissipate and disperse before reaching these areas. As a result, the impact on air quality created by the quarry operation is not expected to affect existing developments.

53. Mitigation measures to minimize any impacts to air quality include temporarily halting operations at the quarry during severe wind conditions and properly maintaining the equipment to minimize excessive exhaust emissions.

#### Noise

54. Quarry operations will be a source of noise from such activities as blasting, crushing, other quarry activities and the use of heavy machinery. The impact from these activities will be less than that created by the two existing quarries which are closer to sensitive noise receptors such as Waikoloa Village residents and Waikoloa Beach Resort guests. Mitigation measures to minimize noise impacts include mufflers on the equipment and limiting all quarrying work to normal working hours. All quarrying operations will be conducted in conformance with DOH regulations regarding noise.

#### Water

55. Water is available to the Property from the privately owned and operated system in the area.

Solid Waste

56. The proposed West Hawaii landfill is located approximately 4.5 miles to the south of the Property.

Sewage

57. Sewage would be disposed of in accordance with the requirements of DOH.

Electricity and Telephone Service

58. The proposed quarry will not create any significant demand on the existing public utilities such as electricity and telephone service. The quarry development will be coordinated with HELCO.

CONFORMANCE WITH SPECIAL USE PERMIT TESTS

59. In support of the request, the Planning Department provided the following:

"The granting of this request will not be contrary to the objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect, and encourage the development of lands in the interest of the public health and welfare of the people of the State of Hawaii. The area under consideration is designated as Agricultural by the State Land Use Commission. The Agricultural District not only includes lands with a high capacity for agricultural uses, but also lands which are surrounded by or contiguous to agricultural and ancillary activities by reason of topography, soils, and other related characteristics. The property is not classified by the State of Hawaii's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The Land Study Bureau's Overall Master Productivity Rating is 'E' or 'Very Poor' for the subject area. The subject area also is not being utilized for any agricultural purposes because of the poor soil conditions. Therefore, the proposed use would not displace agricultural activity on the property or diminish the agricultural potential of the region.

"The 220 acre area for the proposed quarry is part of a 3,049.994 acre parcel situated within the County's Unplanned zoned district. The applicant will be establishing a new quarry site to replace the two existing quarries approved by Special Permits that are being phased out due to expiration of the permits, expanded resort and residential construction needs and adverse visual concerns. The new quarry will also enable the owner to consolidate equipment and resources from the two existing quarry sites to a single site. With the closure of the two existing quarries, the new quarry would consolidate the two existing and separate operations in an area where the visual and physical impacts to the Waikoloa Village and surrounding properties would be greatly minimized.

"Activities in the new quarry site will include blasting, drilling, rock crushing and screening, concrete ready-mix batching, pre-casting, asphaltic concrete products manufacturing, equipment and materials storage and repair, and other related and necessary uses and activities. Operating hours will be generally from 6:30 a.m. to 5:30 p.m. given its considerable distance, noise and air quality will not significantly affect surrounding uses. Additionally, standard construction practices will be instituted.

"The special permit request is to allow the quarry operation to the year 2010. A condition of this permit includes an expiration date of December 31, 2010. Should additional time be necessary an amendment to this permit would have to be made prior to that date.

"The proposed use will not be contrary to the General Plan. The location of urban type uses should be evaluated from the standpoint of how each use services existing and future land uses of the surrounding area. The subject property is designated for Urban Expansion uses on the LUPAG Map. A quarry operation would be consistent with the Urban Expansion designation.

"This recommendation is also consistent with the goal of the Land Use Element of the General Plan to 'Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County (sic) and 'The County of Hawaii should require users of natural resources to conduct their activities in a manner that avoids or minimizes adverse effects on the environment.'

"To this end, the applicant will be required to submit an Erosion Control and Site Restoration Plan to ensure that the project site and its contours blend in with the surrounding area upon completion. An archaeological area adjacent to the affected area would be preserved with all 19 identified sites left in tact (sic). The applicant will be required to stake the preservation area (including a 50-foot buffer) and inform the operators of the quarry of its preservation. Additionally, a survey of the area will be required of the pahoehoe area where there is a possibility of ophioglossum plants. The survey would be performed prior to land alterations.

"Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The rapid growth experienced, especially in West Hawaii, has created a demand for natural resources by the construction industry. This request is meant to supply a portion of that demand. Additionally, the growth of the West Hawaii Region has created needs not available from nearby urban zoned lands. The community can function more effectively if located on-site than on distant urban lands.

"The desired use will not adversely affect the surrounding properties. Surrounding uses are vacant lands. The new quarry operations will provide necessary material services to potential purchasers and future residents of the development. Access to the proposed quarry site will be from Waikoloa Road. The proposed quarry and manufacturing area will be provided with adequate parking and landscaping to buffer visual impacts.

"Conditions of approval relative to archaeological sites, survey for ophioglossum, erosion control and site restoration, and dust control, have been included in this recommendation of approval to assure minimal impact on the environment and to surrounding areas.

"The desired quarry use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. All necessary facilities are or can be made available to the property. Since Waikoloa Road is a County road, access to the property will be subject to the approval of the Department of Public Works."

Planning Commission Recommendation

60. At its meeting of September 22, 1992, the Planning Commission recommended approval of the Permit to the LUC subject to the following conditions:

- "1. The applicant, its 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 within one year from the effective date of this permit. 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 within one year from the date of receipt of Final Plan Approval. 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. 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.
- "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 Hawaii 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 the Department of Public Works, one year prior to the expiration date of the permit or prior to 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 Department of Public Works for review and approval within ninety (90) days from the date of termination or abandonment.
- "12. The life of this permit shall be until December 31, 2010; 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. 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.
- "15. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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.
- "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."

#### CONCLUSIONS OF LAW

The Special Permit request to allow the establishment of a quarry and related uses constitutes an "unusual and reasonable" use as defined in Chapter 205-6, HRS, as amended, and the proposed use, subject to the conditions in the Order, is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

#### ORDER

IT IS HEREBY ORDERED that Special Permit Docket No. SP92-381 to allow the establishment of a quarry and related uses on approximately 219.990 acres of land designated within the State Land Use Agricultural District, Tax Map Key No.: 6-8-01: 5 (por.) at Waikoloa, South Kohala, Hawaii, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby approved, subject to the following conditions:

1. The applicant, its 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 within one year from the

effective date of this permit. 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 within one year from the date of receipt of Final Plan Approval. 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. 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.

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 Hawaii 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 the Department of Public Works, one year prior to the expiration date of the permit or prior to 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 Department of Public Works for review and approval within ninety (90) days from the date of termination or abandonment.

12. The life of this permit shall be until December 31, 2010; 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. 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.

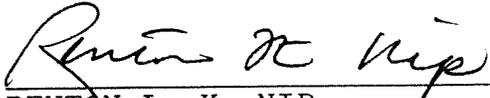
15. An annual monitoring report shall be submitted to the Planning Director and Land Use Commission prior to the

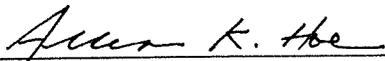
anniversary date of the approval of the permit. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems and their disposition. Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease 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.

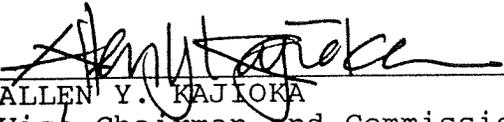
16. An extension of time for the performance of conditions within the permit, with the exception of Condition No. 12, may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control 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.

Done at Honolulu, Hawaii, this 19th day of January 1993,  
per motions on November 12, 1992 and January 14, 1993.

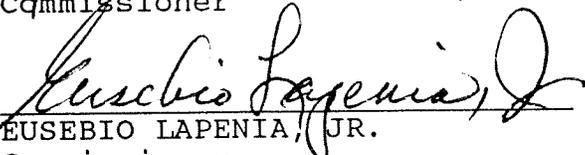
LAND USE COMMISSION  
STATE OF HAWAII

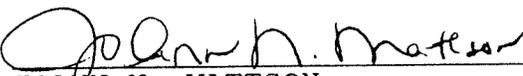
By   
RENTON L. K. NIP  
Chairman and Commissioner

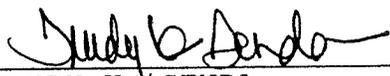
By   
ALLEN K. HOE  
Vice Chairman and Commissioner

By   
ALLEN Y. KAJIOKA  
Vice Chairman and Commissioner

By   
KAREN S. AHN  
Commissioner

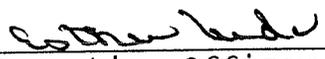
By   
EUSEBIO LAPENIA, JR.  
Commissioner

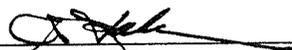
By   
JOANN N. MATTSON  
Commissioner

By   
TRUDY K. SENDA  
Commissioner

Filed and effective on  
January 19, 1993

Certified by:

  
Executive Officer

By   
ELTON WADA  
Commissioner

By (absent)  
DELMOND J. H. WON  
Commissioner

