

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
WAIKOLOA DEVELOPMENT COMPANY)
)
For a Second Amendment to Special)
Permit No. SP70-85 Which Allowed)
the Establishment of the Puu)
Hinai Quarry (Site 1) and the)
Village Quarry (Site 2) and)
Allied Uses on Approximately 161)
Acres of Land Situated Within)
the State Land Use Agricultural)
District at Waikoloa Village,)
Waikoloa, South Kohala, Tax Map)
Key Number: 6-8-02: 16 por. and)
33 por.)
_____)

DOCKET NO. SP70-85
WAIKOLOA DEVELOPMENT
COMPANY

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LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

Waikoloa Development Company (hereinafter "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and subchapter 12 of chapter 15, of the Hawaii Land Use Commission Rules. The Land Use Commission (hereinafter the "Commission"), 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 application for a second amendment to special permit (hereinafter "Amendment") was filed by Waikoloa Development Company (hereinafter "Petitioner") with the County of Hawaii Planning Department on September 5, 1990. On

November 8, 1990, Petitioner filed a letter requesting an amendment to their Special Permit.

2. The County of Hawaii Planning Commission conducted public hearings on November 8, 1990 and December 20, 1990. No written public testimonies were received in response to the request.

3. On December 20, 1990 the County of Hawaii Planning Commission recommended approval of the Amendment subject to 10 conditions. A copy of the record of the proceedings before the County of Hawaii Planning Commission was received by the Land Use Commission (hereinafter "LUC") on January 10, 1991.

Description of the Property

4. The subject property (hereinafter "Property") is located in the South Kohala area of the island of Hawaii, approximately 4.5 miles mauka of the Waikoloa Resort area. The Property consists of two non-contiguous quarry parcels approximately 1-1/4 miles apart and are identified as island of Hawaii, Tax Map Key Number 6-8-02: portion 16 and portion 33.

5. Quarry Site number 1, the Pu'u Hinai quarry (hereinafter Site 1), is approximately 69 acres in size. Quarry Site number 2, the Village Quarry (hereinafter Site 2), is approximately 92 acres in size.

Site 1

6. Site 1 is located on the southwest face of a cinder cone, which reaches an elevation of 1,439 feet above sea level. Site 1 is located approximately 4,600 feet south of the

Waikoloa Road and 4.5 miles mauka of the Queen Ka'ahumanu Highway. A gravel road on a 50 foot-wide easement provides access to Site 1 from Waikoloa Road. Site 1 is owned by Petitioner.

7. In this area, the Petitioner is proposing development of the Waikoloa Highlands Golf Estates, a 400± one and two acre lot and golf course development.

8. As a part of this effort, Petitioner is in the process of rezoning the lands neighboring Site 1. On September 28, 1990, the Planning Commission recommended that 761 acres immediately to the north be rezoned from the Unplanned and the Multiple-Family Residential-1,500 square foot (RM-1.5) district to the Residential and Agricultural-1 acre (RA-1a) and Open zoned district. The RA-1a zoning allows for residential and agricultural uses with a minimum lot size of 1 acre. This rezoning proposal is under consideration by the Hawaii County Council.

9. On December 19, 1990, Petitioner obtained a County Use Permit to begin construction of the Waikoloa Highlands Golf Course on land to the northwest of the quarry. County Use Permit No. 71 allows for golf course and related improvements on lands that abut the quarry's northern boundary.

10. The conditions of Use Permit No. 71 require that Final Plan approval for that golf course be secured within one year of the effective date of the Use Permit, and that

construction begin within one year of the Final Plan approval. Construction is to be completed within three years thereafter.

11. Petitioner has also submitted an application for the subdivision of nearby land on TMK: 6-8-02: 16 and 6-8-3: 32, which includes the golf course area, into sixty-two +5-acre lots.

12. The roadway easement that provides access to Site 1 passes through the proposed golf course and residential-agricultural development.

Site 2

13. Site 2 is adjacent to the southern boundary of the Waikoloa Village Urban District. Site 2 is a 92-acre portion of the 267.889-acre lot 3-B, and is approximately 600 feet south of Waikoloa Road and 3 miles mauka of Queen Ka'ahumanu Highway. This quarry has been sporadically used to provide blue rock aggregate and base course material for roadway construction. There are also storage and maintenance buildings at this quarry. Site 2 was conveyed to the Waikoloa Village Association via a settlement agreement in 1987 from, and subsequently leased back to Petitioner.

14. Access to Site 2 from Waikoloa Road is provided by an existing ± 10 foot-wide paved road within a 12 foot-wide easement. This access road enters the Property at its northern boundary.

15. Hawaiian Telephone Company operates a microwave radio station on an adjoining property to the north. The

nearest residence is the 24-unit Waikoloa Gardens Apartments located approximately 650 feet north of Site 2. The 66-unit Kipona Hills condominium development and the Pheasant Ridge single-family residential subdivision are located approximately 700 feet to the northwest of the Property. The 197-unit Greens at Waikoloa Condominium development is located 1,100 feet north of Site 2.

16. Quarry Site 2 is immediately south of the proposed Waikoloa Highlands golf course.

17. A day care facility and church have been established on adjacent lands to the north of Site 2 pursuant to a Use Permit granted by the Planning Commission. The duration of that Use Permit runs concurrently with the terms of a lease agreement between the the permit holder and Waikoloa Development Company. This lease extends to December 14, 1991.

18. Makai of the subject quarries, near the Queen Ka'ahumanu Highway/Waikoloa Road intersection, is another quarry operation of approximately 309 acres. This quarry was the subject of LUC Special Permit No. 71-117 which was approved on May 15, 1981. This permit expires on December 1991.

Permit Background

19. On December 11, 1970, the LUC approved Special Permit SP70-85 to Boise Cascade Properties to operate two quarry sites on Tax Map Key No. 6-8-02: 4 portion, including a screening plant, rock crusher, scales, AC batching plant, concrete batching plant, and equipment repair facilities.

20. This Special Permit was subject to the following Conditions:

- "1. That all State and County standards and appropriate safety measures be taken by the applicant to safeguard vehicular traffic during the entire operation, 24 hours per day. (See Exhibit Z, pp. 1-3)
2. That the applicant shall take every precaution not to create any inconvenience from noise and dust problems during the operation.
3. Upon completion of the operations, all temporary support facilities i.e. rock crushers, A.C. batching plant, steel repair facility, and concrete batching plant, along with all allied equipment, will be removed. A grading plan will be done, natural contours will be restored, and the area will be seeded with the hydromulcher. At the end of construction activities, the quarry site shall appear as natural as open space, and not as a scar on the landscape.
4. That this permit shall expire within 5 years from the date of approval by the State Land Use Commission should that agency approve this request.
5. That the operation be confined within the metes and bounds description as submitted."

Description of Proposed Amendments

Site 1

21. Petitioner has requested that the quarry area at this Site 1 be reduced from 69 acres to 63.648 acres. The reason for the reduction is to exclude the portion of the site proposed for rezoning to the Residential-Agricultural zoned district. Site 1 is to be quarried for cinder and topsoil for the construction of golf courses and landscaping elements in Waikoloa, primarily the Highlands Golf Course. Since the

Special Permit was first issued, the Tax Map Key designation for this site was changed from TMK: 6-8-01: 4 por., to 6-8-02: 16 por.

Site 2

22. At Site 2, Petitioner is requesting that active elements of the quarry operation, the rock crushing and asphalt and concrete batch operations, be deleted from the permitted use.

23. Remaining operations would only involve the removal of existing stockpiled materials, boulders, and fieldstones as well as equipment storage and repair. The proposed activity will not involve the use of explosives. Stockpiled rock material and boulders will be removed from the existing excavated area in the southeast portion of the Property. Fieldstones will be removed by hand from the remainder of the Property. The Tax Map Key designation of this site has been changed from TMK: 6-8-02: 4 portion to 6-8-02: 33 portion.

24. Petitioner is requesting an extension of the life of the permit for both Quarry Sites 1 and 2 from December 11, 1990 to December 11, 1995.

State and County Plans and Programs

25. Both quarry sites are designated within the State Land Use Agricultural District.

26. The nearest State Land Use Urban District situated near Site 1 is approximately 1 mile to the southeast. Site 2 is less than a 1/4 mile south of the Waikoloa Highlands Urban area.

27. County zoning at Site 1 and adjacent lands is Unplanned. County zoning at Site 2 and its surrounding area is designated Open and RM 1.5.

28. The County of Hawaii General Plan designates Site 1 Extensive Agriculture and Site 2 as Industrial.

29. Neither site is within the County of Hawaii Special Management Area (SMA).

Summary of Agency Comments

30. The County of Hawaii Department of Water Supply stated:

"The water system in the area is privately owned and operated. The private water purveyor should be contacted for water availability."

31. The Mauna Kea Soil and Water Conservation District stated the following concerns:

Dust Control; through the time of excavation a water truck should be available and the Ground should be kept wet to prevent dust pollution.

Revegetation of Quarry Site; the excavated area should be stripped of all existing vegetation along with the first 12" of top soil and stockpiled in wind-rows to be used to dress over the area when the excavation is completed. The County Extension Service should be contacted for suggested grasses, fertilizer and timing recommendations for the revegetation of the quarry sites. Only 25% of the quarry site should be exposed at one time and revegetation of the exposed site should be completed before starting quarry operations on the next 25%. This process should be followed for each quarter of the quarry site. The site must be equal to or better than the condition prior to the quarry operation.

Land Smoothing; after excavation is completed the quarry site should be shaped having 3 to 1 slopes (maximum) to help eliminate deep holes in the quarry site.

Test Boring; should be required within the area to be quarried, 1 per acre minimum, location marked on resource map. The total depth and quality of soil, depth and quality of topsoil, amount and type of soil to be removed from the site will be noted along with other pertinent information.

Natural Drainage Pattern; should not be changed, storm water velocity, quality of water, and exit location will not be changed as result of quarrying."

32. The County Public Works, Parks and Recreation, and Police Departments had no comments or objections to the Special Permit. The County's Real Property Tax Division also had no comment to offer. The County Fire Department did not provide comments. The County Department of Water Supply stated that water is provided by a private water purveyor.

33. The Hawaii Electric Light Company had no comments or objections to the Special Permit.

34. The Departments of Education and Transportation, Highways Division had no comments or objections to the Special Permit. The Health Department stated that there are no environmental health concerns raised by this Special Permit. The State Department of Land and Natural Resources and the Department of Agriculture did not provide comments.

Conformance With Special Permit Tests

35. In support of the request, the County of Hawaii Planning Department provided, in part, the following:

"The Land Use Commission found in 1970 that the quarry activity was an unusual and reasonable use of the land in the State Land Use Agricultural District and that it was a necessary and integral part of the applicant's overall development. In

view of the significant growth experienced within Waikoloa Village since approval of the permit, the continued use of the quarry sites must be evaluated against existing and future developments in the vicinity.

"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 quarry sites were approved in 1970 and have been in use since then. Continued use of the sites will not affect the agricultural capacity of the subject property or of surrounding lands.

"A five-year time extension will not adversely affect surrounding properties. The applicant states that materials will be needed from Quarry Site 1 for the construction of the Highlands Golf Course and landscaping elements within Waikoloa. Quarry activities at Site 1 involve the removal of topsoil and cinder, much of which will be used for constructing the adjacent Highlands Golf Course. The quarry activities is not anticipated to negatively impact the golf course development. The proposed Residential-Agricultural zoned lands adjacent to the quarry site are scheduled to be developed incrementally as a part of a +400-lot subdivision. If the adjacent RA zoned lots are subdivided prior to expiration of the five-year term of the permit, continued quarry use with the associated impacts of noise, visual, dust, and traffic would not be compatible with the residential-agricultural use. It is, therefore, recommended that the life of the permit be extended for five years or until final subdivision approval for the RA zoned lands adjacent to Site 1, whichever occurs first.

"The Village Quarry Site 2 was established prior to substantial residential development within Waikoloa Village and has been only sporadically quarried. Residential development within the Waikoloa Village has increased significantly in recent years. However, it is determined that removal of stockpiled materials and field stones will not significantly impact surrounding properties. The excavated portion of the quarry site from which stockpiled material and boulders would be removed is situated over 500 feet to the south of the State Land Use Urban district boundary. Prevailing winds are to the Southeast. Noise and dust from loading activities in this area would not negatively affect surrounding properties. Fieldstone will be collected by hand from the remainder of the site. This activity is not anticipated to generate negative impacts. The five-year time extension would allow the applicant to remove materials needed for current development and to secure alternate quarry sites.

"Considering the proximity of the Village Quarry to existing residential areas and the church/day care center, the hours and days of operation of Site 2 shall be limited to between 7:00 a.m. and 6:00 p.m., Monday through Friday. It is also recommended that a condition be included to allow the Planning Commission to revoke the Special Permit should a conflict with neighboring uses arise which cannot be mitigated or mediated."

Planning Commission Recommendation

36. At its meeting of December 28, 1990, the County of Hawaii Planning Commission recommended approval of the Special 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. A map and metes and bounds description of Site 1 shall be filed with the Planning Department within one year from the effective date of the amendment.
- "3. Activities permitted at Site 2 shall include only the removal of stockpiled materials, boulders and fieldstone and equipment storage and repair. Rock crushing, asphalt and concrete batch operations, and the use of explosives shall not be permitted.
- "4. The activities at Site 2, including loading and hauling, shall be limited to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday.
- "5. Quarrying operations at Site 1 shall be terminated by December 11, 1995, or prior to final subdivision approval of the increment of adjacent RA zoned lands which abut the quarry boundaries, or prior abandonment, whichever occurs first.
- "6. Activities at Site 2 shall be terminated by December 11, 1995, or prior abandonment, whichever occurs first.
- "7. Upon termination of the operations or abandonment of any portion of the affected sites, the land shall be graded to blend with the surrounding areas and re-vegetated. Further, the sites shall be left in a non-hazardous condition. Appropriate

documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within ninety (90) days from the termination or abandonment date.

- "8. All other applicable laws, requirements, rules and regulations, including those of the Department of Health, shall be complied with.
- "9. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of this amendment. The report shall include, but not be limited to, the amount of material quarried or removed, a detailed listing of public complaints or problems, and their disposition. Should conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the quarry use will have an adverse impact on surrounding properties.
- "10. 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 proposed Amendments, subject to the conditions in the Order, constitute an "unusual and reasonable" use as defined in Chapter 205-6, Hawaii Revised Statutes and are 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 the amendments to Special Permit Docket Number SP70-85 to (1) extend the life of the permit for Quarry Sites 1 and 2 from December 11, 1990 to

December 11, 1995, (2) reduce the size of Quarry Site 1 from 69 acres to 63.6 acres, and (3) reduce the scope of quarrying activities at Site 2 by deleting rock crushing and asphalt and concrete batch plant operations and allowing only the removal of existing stockpiled materials and equipment storage and repair, on land designated within the State Land Use Agricultural District, Hawaii Tax Map Key No.: 6-8-02: portion of parcel 16 and portion of parcel 33, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, are hereby approved, subject to the following conditions which shall replace the original conditions of approval:

1. The Petitioner, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. A map and metes and bounds description of Site 1 shall be filed with the Planning Department and the Land Use Commission within one year from the effective date of this order.
3. Activities permitted at Site 2 shall include only the removal of stockpiled materials, boulders and fieldstone and equipment storage and repair. Rock crushing, asphalt and concrete batch operations, and the use of explosives shall not be permitted.
4. The activities at Site 2, including loading and hauling, shall be limited to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday.
5. Quarrying operations at Site 1 shall be terminated by December 11, 1995, or prior to final subdivision approval of

the increment of adjacent RA zoned lands which abut the quarry boundaries, or prior abandonment, whichever occurs first.

6. Activities at Site 2 shall be terminated by December 11, 1995, or prior abandonment, whichever occurs first.

7. Upon termination of the operations or abandonment of any portion of the affected sites, the land shall be graded to blend with the surrounding areas and re-vegetated. Further, the sites shall be left in a non-hazardous condition.

Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Hawaii County Planning Director for review and approval within ninety (90) days from the termination or abandonment date.

8. All other applicable laws, requirements, rules and regulations, including those of the Department of Health, shall be complied with.


9. An annual monitoring report shall be submitted to the Hawaii County Planning Director and the State Land Use Commission prior to the anniversary date of the approval of this amendment. The report shall include, but not be limited to, the amount of material quarried or removed, a detailed listing of public complaints or problems, and their disposition. Should conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the County of Hawaii Planning Commission that the quarry use will have an adverse impact on surrounding properties.

10. Should any of the conditions not be met or substantially complied with in a timely fashion, the Hawaii County Planning Director shall initiate procedures to revoke the permit.

Done at Honolulu, Hawaii, this 6th day of March 1991,
per motions on February 7, 1991 and March 1, 1991.

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 (absent)
EUSEBIO LAPENIA, JR.
Commissioner

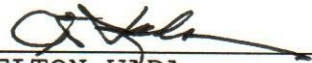
By 
JOANN N. MATTSON
Commissioner

Filed and effective on
March 6, 1991

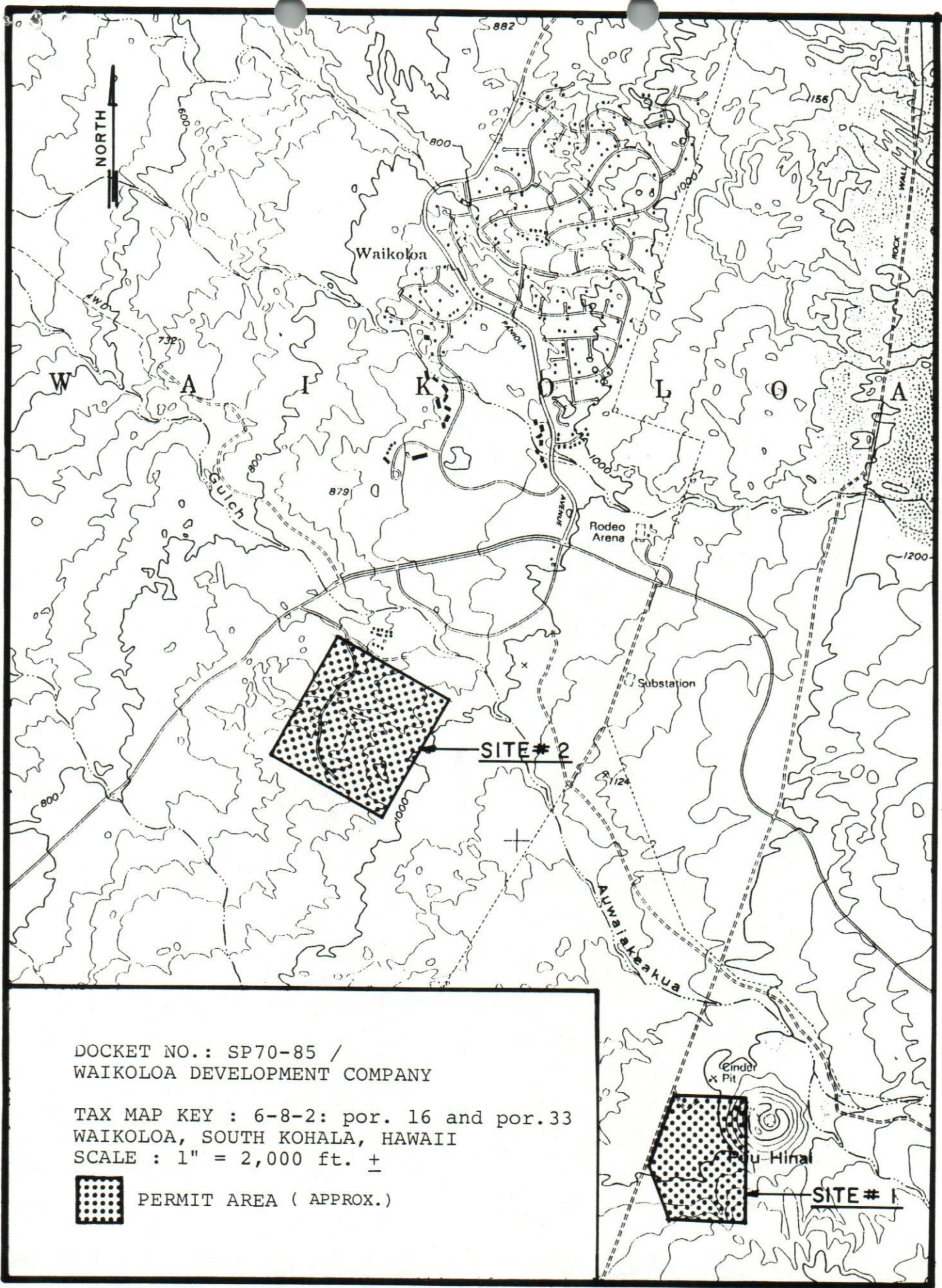
Certified by:


Executive Officer

By (absent)
JAMES M. SHINNO
Commissioner

By 
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner



DOCKET NO.: SP70-85 /
 WAIKOLOA DEVELOPMENT COMPANY

TAX MAP KEY : 6-8-2: por. 16 and por.33
 WAIKOLOA, SOUTH KOHALA, HAWAII
 SCALE : 1" = 2,000 ft. ±

 PERMIT AREA (APPROX.)

EXHIBIT "A"

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District at Waikoloa Village,)	
Waikoloa, South Kohala, Tax Map)	
Key Number: 6-8-02: 16 por. and)	
33 por.)	


CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. NORMAN K. HAYASHI, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. KEN MELROSE, Director of Planning
Waikoloa Development Company
P. O. Box 3028
Waikoloa, Hawaii 96743

DATED: Honolulu, Hawaii, this 6th day of March 1991.


ESTHER UEDA
Executive Officer