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LAND USE COMMISSION
STATE OF HAWAII

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Attorneys for Applicant
WHC, LTD., DBA WEST HAWAII CONCRETE

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
WAIKOLOA DEVELOPMENT COMPANY

For the Establishment of a Quarry Operation
and Allied Uses on Approximately 220 Acres
of Land Situated Within the State Land Use
Agricultural District at Waikoloa, South
Kohala, Hawaii, Tax Map Key Number: 6-8-
01: portion of 5 (nka approximately 219.990
acres of land situate at South Kohala, County
and Island of Hawai'i, Tax Map Key No. (3) 6-
8-001: 066)

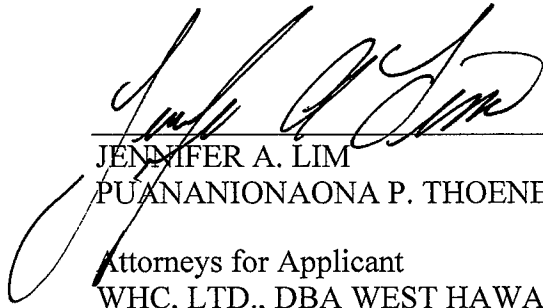
Docket No. SP92-381

APPLICANT'S PROPOSED DECISION
AND ORDER APPROVING AN
AMENDMENT TO SPECIAL PERMIT;
CERTIFICATE OF SERVICE

**APPLICANT'S PROPOSED DECISION AND ORDER APPROVING
AN AMENDMENT TO SPECIAL PERMIT**

Comes now, Applicant WHC, LTD., a Hawai'i corporation doing business as West
Hawaii Concrete ("**Applicant**"), by and through its attorneys, CARLSMITH BALL LLP, and
respectfully submits its Proposed Findings of Fact, Conclusions of Law, and Decision and Order
Approving An Amendment To Special Permit.

DATED: Honolulu, Hawai'i, February 8, 2016.



JENNIFER A. LIM
PUANANIONAONA P. THOENE

Attorneys for Applicant
WHC, LTD., DBA WEST HAWAII
CONCRETE

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

WAIKOLOA DEVELOPMENT COMPANY

For the Establishment of a Quarry Operation and Allied Uses on Approximately 220 Acres of Land Situated Within the State Land Use Agricultural District at Waikoloa, South Kohala, Hawaii, Tax Map Key Number: 6-8-01: portion of 5 (nka approximately 219.990 acres of land situate at South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066)

Docket No. SP92-381

APPLICANT'S PROPOSED DECISION AND ORDER APPROVING AN AMENDMENT TO SPECIAL PERMIT

**APPLICANT'S PROPOSED DECISION AND ORDER APPROVING
AN AMENDMENT TO SPECIAL PERMIT**

I. PROCEDURAL HISTORY

1. On September 15, 2016, the 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, Hawai'i Revised Statutes ("**HRS**"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("**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 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 Hawaii limited partnership (as to an undivided 14.286% interest), as tenants in common ("**Owner**").

3. The County of Hawaii Planning Commission authorized SP 833 at its hearing on September 22, 1992, and the State of Hawaii 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. [PD Ex 3, 5, 17]

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 seek to 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. [PD Ex. 11]
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 Hawaii Civic Center, after presentation by Planning Department staff, the Leeward Planning Commission ("**Planning Commission**") considered the Application. [PD Ex 21, 22]
15. No public testimony 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. [PD Ex. 23, 25].
16. 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.
17. On January 26, 2016, Applicant submitted to the LUC the \$1,000.00 filing fee by check payable to the State of Hawaii.

18. The LUC has jurisdiction over the Application. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize the LUC to approve special use permits and amendments thereto for areas greater than 15 acres.

19. On February 9, 2016, the LUC met in Kailua-Kona, Hawai'i, to consider the Application. Jennifer A. Lim, Esq. appeared on behalf of the Applicant. Planning Director Duane Kanuha, Daryn Arai, Danny B. Patel, Esq. and Molly A. Stebbins, Esq. appeared on behalf of the Planning Department, and, Rodney Funakoshi and _____ Esq. were also present on behalf of the State of Hawai'i Office of Planning ("OP"). [Tr. 02/09/2016, _____]

20. The Permit was first amended on February 26, 1999, which included an amendment to Condition No. 12 to extend the life of the permit until December 31, 2018. [Tr. 02/09/2016; Order Granting Applicant's Request to Amend Condition No. 3 and Condition No. 12, filed on February 26, 1999, at 2]

21. 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.

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

[PD. Ex 18]

23. The Planning Commission's approval of the Application recommended that the Permit be extended until 2043 and not a longer period of time, at which time the Applicant will be required to submit another time extension request to continue operations. [PD Ex 25]

24. 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 complimentary 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. [PD Ex 25]

25. The Planning Commission noted that the allowance of these additional uses will reduce materials from being dumped into the local landfill and will allow those materials to be reused and recycled. [PD Ex 25]

26. The Planning Department also noted Applicant has successfully operated a quarry at the petition area for twenty (20) years. [PD Ex 17, 18, 25]

27. The Planning Department further provided 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. [PD Ex 17, 18, 25]

28. The Planning Commission also recommended approval of the proposed amendments to the Permit on the ground that the land upon which the proposed uses is 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. [PD Ex 25]

29. The Planning Department ultimately recommended that the proposed amendments be granted subject to the following revised changes (Material to be deleted is bracketed and ~~strikethrough~~ 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 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.

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 Hawaii, 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:

1. 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.

2. 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.

3. Construction workers and quarry operational personnel shall be informed of the significance of the staked preservation area. Construction plans shall also note the area.

4. 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 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-terminous 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.

[PD Ex. 25]

30. Following discussion, a motion was made and seconded to approve the Application, subject to the conditions recommended by the Planning Department. [Tr. 02/09/2016, _____]

II. ORDER

The LUC, having duly considered the complete record of the Application and the oral arguments presented by the Applicant, Planning Department, and OP, and a motion having been made at a meeting on February 9, 2016 in Kailua-Kona, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the

motion,

HEREBY ORDERS that Applicant's request to amend Special Permit No. 833 is granted, subject to the conditions set forth by the Leeward Planning Commission, as described above under items (a) through (p), including: (1) the right to operate under Special Permit No. 833 for a period co-terminous 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; (2) the right to conduct greenwaste compositing as an expressly permitted use under the Special Permit; and (3) the right to engage in the processing and recycling of Portland cement concrete and asphalt concrete pavement on the Special Permit site.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
WHC, LTD., dba WEST HAWAII
CONCRETE

Docket No. SP92-381

CERTIFICATE OF SERVICE

For the Establishment of a Quarry Operation and Allied Uses on Approximately 220 Acres of Land Situated Within the State Land Use Agricultural District at Waikoloa, South Kohala, Hawaii, Tax Map Key Number: 6-8-01: portion of 5 (nka approximately 219.990 acres of land situate at South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066)

CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of the within document was made by depositing the same with the U.S. Mail, postage prepaid, or by hand delivery, on February 8, 2016, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Acting Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, HI 96813
HAND DELIVERY	DOUG S. CHIN, Esq. BRYAN C. YEE, Esq. Deputy Attorney General Department of the Attorney General 425 Queen Street Honolulu, HI 96813
U.S. MAIL	MOLLY A. STEBBINS DANNY PATEL Office of the Corporation Counsel Hilo Lagoon Centre 101 Aupuni Street, Unit 325 Hilo, HI 96720

DUANE KANUHA, Planning Director
DARYN ARAI, Planning Program Manager
County of Hawaii Planning Department
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Hilo, HI 96720

DATED: Honolulu, Hawai'i, February 1, 2016.



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