

SPECIAL PERMIT APPLICATION

COUNTY OF HAWAII
PLANNING DEPARTMENT

2015 SEP 15 AM 11 17

PLANNING DEPARTMENT
COUNTY OF HAWAII

(Type or Print the requested information)

APPLICANT: WHC, Ltd., a Hawaii corporation dba West Hawaii Concrete

APPLICANT'S SIGNATURE: *Jan [Signature]*, attorney for applicant DATE: 09/14/2015

ADDRESS: West Hawaii Concrete LTD., P.O. Box 1390, Kailua Kona, HI 96745

LIST APPLICANT'S INTEREST IF NOT OWNER: Licensee (Quarry operator)

TELEPHONE: (Bus.) 808-329-3561 __ (Home) N/A _____ (Fax) 808-329-2267 _____

REQUEST: Extension and Modification to Special Use Permit No. 833 for quarry

TAX MAP KEY: (3) 6-8-001:066 ZONING: A-5a

AREA OF PROPERTY/AREA OF REQUESTED USE: 219.990 acres

LANDOWNER: WQJ2008 Investment, LLC, a Washington limited liability company, and Ukumehame Quarry Company Limited Partnership, a Hawaii limited partnership, as tenants in common

LANDOWNER'S SIGNATURE: See Exhibit 3 DATE: _____
(May be by letter)

LANDOWNER'S ADDRESS: _____
WQJ200 Investment, LLC, c/o Agent, Charlie Jencks, Pacific Rim Land Inc., P.O. Box 220, 1300 N. Honopono Street #201, Kihei, Hawaii 96753

Ukumehame Quarry Limited Partnership, c/o Agent, Charlie Jencks, Pacific Rim Land Inc., P.O. Box 220, 1300 N. Honopono Street #201, Kihei, Hawaii 96753

AGENT: Jennifer A. Lim, Carlsmith Ball LLP. (See Exhibit 3A).

ADDRESS: 1001 Bishop Street, Suite 2100, Honolulu, Hawaii 96813. EMAIL: jlum@carlsmith.com

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Please indicate to whom original correspondence and copies should be sent to:

ORIGINAL: Mel Macy, West Hawaii Concrete COPIES: Jennifer A. Lim, Esq.

**SPECIAL PERMIT APPLICATION
REQUEST FOR MODIFICATION TO
AND EXTENSION OF SPECIAL
PERMIT NO. 833 (SP92-381)**

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**SPECIAL PERMIT APPLICATION REQUEST FOR MODIFICATION TO AND
EXTENSION OF SPECIAL PERMIT NO. 833 (SP92-381)**

I SUMMARY

Applicant / Owner: WHC, Ltd, a Hawaii corporation doing business as West Hawaii Concrete ("**Applicant**") / 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**").

Property Location: 219.990 acres of land, approximately 4 miles mauka of Queen Kaahumanu Highway, in South Kohala, south of Waikoloa Road.

Tax Map Key: (3) 6-8-001:066 [formerly TMK: (3) 6-8-001:005 (por.)]

Request: Special Permit No. 833 was issued in January 1993. *See* Findings of Fact, Conclusions of Law, and Decision and Order of the State Land Use Commission issued January 19, 1993. The term of Special Permit No. 833 ends December 31, 2018. Applicant seeks approval to: (i) extend the life of the Special Permit 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); (ii) include greenwaste composting as an expressly permitted use under the Special Permit; and (iii) allow for the processing and recycling of Portland cement concrete and asphalt concrete pavement on the Special Permit site.

Petition Area:	219.990 acres
State Land Use District:	Agricultural District
General Plan (LUPAG):	Urban Expansion
Community Development Plan:	Within the South Kohala CDP
Zoning:	Agricultural-5 acres (A-5a)
Special Management Area:	Outside of Special Management Area
Land Study Bureau:	"E" Very Poor
ALISH:	Unclassified
Archaeological Resources:	Archaeological Inventory Survey prepared in 1991 (PHRI, Jensen and Burgett); Archaeological Assessment Survey was prepared in June 2015 (ASM affiliates, Gotay and Rechtman)
Access:	From Waikoloa Rd. (a two-lane paved County road), to a private quarry access road
FIRM:	Zone X
Drainage:	Site will be graded and sloped for proper drainage
Police and Fire Services:	Services are available; no additional services needed
Telephone and Electrical:	Telephone - N/A. Electrical - solar and occasional generator
Water System:	Provided by West Hawaii Water Company (private, PUC regulated)
Wastewater:	Portable chemical toilets

II PROPOSAL FOR SPECIAL PERMIT

WHC, Ltd, a Hawaii corporation doing business as West Hawaii Concrete ("**Applicant**"), whose mailing address is P.O. Box 1390, Kailua-Kona, Hawaii, 96745, has operated a quarry at the 219.990 acre site ("**Petition Area**") since 1995 under a license agreement with the Owner and under Special Permit No. 833 ("**SP 833**").¹ The County of Hawaii Planning Commission authorized SP 833 at its hearing on September 22, 1992, and the State 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**").

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. Condition 12 of SP 833 provides:

The life of this permit shall be until December 31, 2018; the date of completion of the proposed quarrying; or its abandonment, whichever comes first.

In light of the timeframe established under condition 12, Applicant seeks approval to extend the life of 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, pending the outcome of Applicant's request to the Planning Commission and LUC. In addition, Applicant seeks to amend SP 833 to: (i) include greenwaste composting as an expressly permitted use under SP 833; and (ii) allow for the processing and recycling of Portland cement concrete ("**PCC**") and asphalt concrete pavement ("**ACP**") within the Petition Area. Should any

¹ Actual quarry operations started in 1999, but Applicant secured rights to the property under a license agreement with the landowner starting in 1995.

additional future uses within the Petition Area be desired which are not allowed by right within the State Land Use Agricultural District under Chapter 205, Hawaii Revised Statutes ("HRS"), the Owner or the Applicant will seek a further amendment to this SP 833.

A **PROPERTY LOCATION, DESCRIPTION AND OWNERSHIP**

The Petition Area is approximately 219.990 acres, located at Waikoloa, South Kohala, Island and County of Hawaii. At the time that SP 833 was issued the Petition Area was within a Tax Map Key parcel consisting of 3,049.994 acres, identified as TMK No. (3) 6-8-001: 005. In compliance with condition 4 of SP 833, a map and metes and bounds description of the 219.990-acre Petition Area was submitted to the Planning Department by letter dated October 2, 1992, and the Planning Department acknowledged receipt of the map and metes and bounds description by letter dated October 22, 1992. Copy enclosed as Applicant's **Exhibit 1**.

In November 2008, TMK No. (3) 6-8-001: 005 was subdivided under County Subdivision No. 07-000696. The resulting properties are: (i) Lot 3-B-1, consisting of 1,871.540 acres; (ii) Lot 3-B-2, consisting of 243.794 acres, which includes all of the Petition Area and additional lands; and (iii) Lot 3-B-3, consisting of 934.660 acres. A copy of the subdivision map is enclosed as Applicant's **Exhibit 2**.

Lot 3-B-1 (aka TMK No. 6-8-001: 005), and Lot 3-B-3 (aka TMK No. 6-8-001: 067), are owned by Waikoloa Mauka LLC; these properties are not within the Petition Area and are not part of this Application. Lot 3-B-3 (aka TMK No. 6-8-001: 066) is owned by 2WQJ2008 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**"). Owner acquired Lot 3-B-3 from

Waikoloa Mauka LLC by Deed dated December 29, 2008, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-193969.

Owner and Applicant have both provided authorization to allow Applicant, and Applicant's attorneys, CARLSMITH BALL LLP, to prepare and process this amendment to SP 833, to allow for additional uses within the Petition Area, and to extend the term of SP 833. *See* Applicant's **Exhibit 3** and **Exhibit 3A**, attached hereto and incorporated herein. Applicant does not seek, and Owners do not authorize, any changes to the boundaries of the Petition Area, or any increase or decrease to the size of the 219.990-acre Petition Area.

B PROPOSED PROJECT: BACKGROUND AND OBJECTIVES

The original application for SP 833 was submitted by Waikoloa Development Company to the Planning Department in 1992. The landowner at that time was Waikoloa Land and Cattle Company. The quarry was needed to support the long-term build out of the Waikoloa Beach Resort, Waikoloa Village and other developments in South Kohala. SP 833 was issued subject to 16 conditions of approval. Conditions 2, 3 and 12, which required certain actions to be taken within a set timeframe, were modified by orders dated November 2, 1994, and February 26, 1999.

Applicant, and its predecessor Shield Pacific Ltd., has been in operation on the Big Island since the mid 1960's. Applicant has extensive experience in the field of quarry operations and related businesses. Applicant has operated hard rock quarries in Kau, Kona, Waimea, Puuanahulu Landfill, Puhakuloa Military Reserve, and Waikoloa, and currently has hard rock mining operations in Waimea, Kona, Waikoloa and the Puuanahulu Landfill. Applicant also operates a cinder quarry in the Waimea area. Applicant also owns and operates ready-mix concrete operations in Waimea and Kona. A cut stone operation and hollow tile block plant

owned and operated by Applicant is in operation at the Waimea base yard. A concrete recycling operation is in place at the Kona quarry operated by Applicant.

Applicant began using the Petition Area in 1995 under a license agreement with Waikoloa Land & Cattle Co. Although Applicant has been operating the Petition Area since 1995, no material was quarried at the Petition Area until 1999; construction demand was too low to necessitate commencing quarry operations prior to July 1999. The quarried material at the Petition Area has primarily been aggregate, and not concrete or asphalt.

The amount of quarried material has varied over the years, from a high of 438,138 tons in 2002, to 5,635 tons in 2011. The amount of material quarried during 2013 and 2014 is approximately 33,000 tons each year, which roughly translates into 2,750 tons/month.

SP 833 allows Applicant to conduct concrete ready-mix batching and asphaltic concrete products manufacturing. At present that is not a regular part of Applicant's operations. However, it is anticipated that concrete and asphalt production will continue to be needed in the future, and Applicant's operations will supply those needs.

1 **CONDITIONS OF APPROVAL, SPECIAL PERMIT NO. 833**

Applicant is in compliance with all conditions of approval. A copy of the Annual Monitoring Report, covering the period of 2008 to 2015, was filed with the LUC and County Planning Department in April 2015, and is attached hereto and incorporated herein as Applicant's **Exhibit 4**. The Annual Monitoring Report sets forth the specifics regarding compliance with the conditions of approval. Therefore, the status of only certain conditions of approval will be addressed in the text of this application.

As required under condition 2 of SP 833, Final Plan Approval of the Petition Area was issued by the County Planning Department on December 10, 1996. See Applicant's **Exhibit 5**.

As required under condition 4, a map and metes and bounds description of the Petition Area was submitted to the Planning Department in October 1992. See Applicant's Exhibit 1. As required under condition 5 of SP 833, the construction of the intersection of the quarry access road with Waikoloa Road has been completed, and the quarry access road was completed in June 1999.

Condition 8 required Applicant to consult with the State Department of Land and Natural Resources regarding the possibility of a particular plant being found within the Petition Area. As more fully addressed in Section V.E (Floral and Faunal Resources) *infra*, this condition has been satisfied. There are no threatened, endangered or candidate plant species within the Petition Area.

Condition 9 limited the quarry activities within the Petition Area to the hours of 6:30 a.m. to 5:30 p.m. daily; provided that active noise-generating activity (i.e., blasting, crushing) shall commence no earlier than 7:30 a.m. As more fully addressed in Section IV.C (Days and Hours of Operation) *infra*, Applicant has operated the quarry in compliance with this condition. Applicant will continue to adhere to this condition should the requested amendment be approved.

Condition 13 of SP 833 required an adequate supply of water to be made available for dust control and fire prevention. In 1999, Applicant completed the construction of the 4-inch waterline that supplies the Petition Area. The waterline connects to the 16-inch waterline owned by West Hawaii Water Company that runs along the south side of Waikoloa Road.

Applicant does not seek any amendments to conditions 10 or 11 of SP 833, which provide as follows:

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 by 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.

The requirement to submit an Erosion Control and Site Restoration Plan for County review and approval is not triggered until December 31, 2017 (i.e., one year prior to the expiration of SP 833). Should the Planning Commission and LUC grant Applicant's request for an extension to SP 833, Applicant understands that it will be required to submit an Erosion Control and Site Restoration Plan to the Planning Department for review and approval no later than one year prior to the new expiration date of SP 833, or prior to termination of quarrying operations at the Petition Area, whichever occurs first.

All mining activities must follow the regulations of the Mining Safety and Health Administration ("**MSHA**"), which typically inspects the quarry three times a year. Applicant's operations at the Petition Area have complied with all MSHA requirements and this quarry has never been cited for any violations by MSHA.

Excavation is done in a manner such that the established elevations are continued throughout the site. Applicant is required to maintain property perimeter finished slopes from the existing ground to the finished grade of the quarry floor in a manner not to exceed a ratio of 1:1 in steepness. Although not required, in certain areas Applicant may establish a slope ratio of 1.5:1 or even 2:1. The finished floor of the quarry area is left with a slight negative/decline of approximately 1% slope from east to west.

Applicant reaffirms its commitment that upon termination of the quarrying operations, the Petition Area will be graded to blend with the surrounding areas. The quarried land will be returned flat, with a slight decline in grade from east to west. Upon termination of the quarrying operations, the Petition Area will be left in a non-hazardous condition. Additional specifics will be addressed no later than one year prior to the termination of SP 833, when Applicant provides to the Planning Department for review and approval an Erosion Control and Site Restoration Plan.

C **OBJECTIVES**

Applicant has successfully operated a quarry at the Petition Area for 20 years, and wishes to continue those operations. Although the top approximately 5 feet of surface has been removed from most of the 219.990-acre Petition Area, the property contains a great deal of additional materials to be quarried. Applicant estimates that 15 acres have been quarried to a depth of 40 feet, and that the average excavation depth that can be pursued at the Petition Area, taking into account the commitment to maintain at least a 1:1 ratio, is 125 feet. This means that the quarry can safely provide several million tons of material and therefore easily several decades of quarry activity. Optimizing the use of the Petition Area for quarrying means that more locally sourced materials can be used for construction. Similarly, the on-going flexibility of being permitted to conduct concrete ready-mix batching and asphalt concrete manufacturing will also allow for use of locally sourced and produced materials.

Applicant, in addition, wishes to conduct recycling activities within the Petition Area, such as recycling of Portland Cement Concrete and Asphalt Concrete Pavement. By allowing Applicant to use the Petition Area for recycling of these materials, Applicant anticipates the avoidance of approximately 2,000 tons of materials being dumped into the local landfill

(Applicant's estimates are 1,000 tons/year of each, as discussed in Section III.C. (Recycling of Portland Cement Concrete and Asphalt Concrete Pavement) *infra*).

In addition to the benefits of diverting materials from the landfill, the recycling will result in high quality but less expensive materials becoming available for use by local contractors, including road construction crews. For example, the Queen Kaahumanu Highway widening project, which will widen the Highway from two lanes to four between Kealakehe Parkway and Kona International Airport, requires that 10% recycled asphalt concrete be added to any new asphalt used on the widening project. Mandatory use of recycled materials is becoming common throughout the Country. Applicant's proposed ACP and PCC processing and recycling will provide these needed materials for use in Hawaii projects.

Applicant also wishes to continue its greenwaste composting activities within a portion of the Petition Area. In the absence of options for greenwaste composting, greenwaste is often deposited in landfills. This takes up space in the landfills, which could be avoided by providing better options for the use of greenwaste. Composting is an environmentally friendly option to filling a landfill. In addition, the valuable natural byproduct of mulch, which results from the composting process, is not produced when greenwaste is dumped into a landfill.

III PROJECT DESCRIPTION - AMENDMENT TO SPECIAL PERMIT NO. 833

As mentioned above, the County issued Final Plan Approval for the Petition Area in December 1996. *See* Applicant's Exhibit 5 (1996 plan showing the areas of operation within the Petition Area). Attached hereto and incorporated herein by reference as Applicant's **Exhibit 6** is a site plan showing the current most active quarry area, the proposed location of the recycling areas for Portland Cement Concrete ("PCC") and Asphalt Concrete Pavement ("ACP"), and the greenwaste composting area.

Noted on Applicant's Exhibit 6 is a 14.77-acre area labeled SPP 08-000064. This area is within Lot 3-B-2 (and therefore within TMK 6-8-001: 066), but is not part of the Petition Area for SP 833. This 14.77 acre area is permitted under Special Permit SPP 08-000064, which was issued to Goodfellow Brothers, Inc., by the Planning Commission in October 2008 to allow for the establishment of a baseyard to provide equipment and motor vehicle maintenances and repair services (the "**GBI Permit**"). The life of the GBI Permit for the baseyard facility expires on December 31, 2018. Applicant is not seeking an amendment to the GBI Permit.

Accessing the quarry Petition Area requires Applicant to cross through a small portion of the GBI Permit area. This is the area between the access roadway, which is noted on Applicant's Exhibit 2 as "Easement 3" (7.794 acres), and the Petition Area. The activities authorized under the GBI Permit and SP 833 (the quarry permit) are compatible, and have co-existed for several years. The Owner and Goodfellow Brothers, Inc., have authorized Applicant to continue to use the existing access route from Waikoloa Road to the Petition Area.²

A **QUARRY**

The term of SP 833 expires on December 31, 2018, per condition 12 of SP 833. Applicant would like to continue quarry operations at the Petition Area to 2043 or longer — (i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063). This request is based upon the term of the license agreement between Applicant and Owner. As stated above, Applicant has been operating the quarry under a license agreement with the landowner since 1995. The current license agreement term is proposed to run to December 31, 2043, pending the outcome of Applicant's current request to the Planning

² Lot 3-B-2 contains 243.794 acres. 234.76 acres of which are covered by SP No. 833 and the GBI Permit (219.990 + 14.77). The remainder of Lot 3-B-2 is comprised of Easement 3 for access and utility purposes (7.794 acres), and a small area of 1.24 acres which is at the south/mauka portion of the area covered by the GBI Permit.

Commission and LUC, and it is expected that Applicant's license agreement could be further extended should the requested extension to SP 833 be approved.

In the 20 years that Applicant has operated the quarry the readily accessible surface material has been removed to a depth of approximately 5 feet from almost the entire Petition Area. Active quarry uses are taking place within the northwest corner of the Petition Area, to a depth of 40 to 45 feet. Approximately 15 acres have been mined to a depth of 40 feet. Over time the active mining area will expand laterally to the south and east. Generally, the quarry supplies aggregate to building contractors, site work contractors and concrete and asphalt producers.

B GREENWASTE COMPOSTING

Applicant has set aside an approximately 3-acre area for greenwaste composting. Applicant obtained a Solid Waste Management Permit from the State Department of Health ("DOH") in 2011 to allow for greenwaste composting of less than 3,000 tons/year (DOH Solid Waste Management Permit by Rule, Permit # CO-0012-09). This allows for the collecting of greenwaste such as grass and shrub clippings and coconut tree prongs, and composting. The greenwaste must be clean, source-separated greenwaste. The materials collected and composted are treated bi-monthly to control insects. In addition, all incoming materials must be screened to ensure that the materials meet with the requirements of the Solid Waste Management Permit.

The current DOH Permit for the greenwaste composting (Permit # CO-0076-11), expires on March 6, 2016. See Applicant's **Exhibit 7**, attached hereto and incorporated herein by reference. The actual composing work is done by Puna Certified Nursery, a private contractor that is under a sublicense agreement with Applicant.

Applicant intends to continue the greenwaste composting within the identified portion of the Petition Area. Although the County has determined that the composting activities are allowed within the Petition Area (the DOH required an executed Attachment P-5, zoning clearance form, to be issued by the County before the DOH would issue the Solid Waste Management Permit, see **Exhibit 7**), Applicant seeks to obtain formal approval from the County Planning Commission and the LUC for the greenwaste composting operation.

C **RECYCLING OF PORTLAND CEMENT CONCRETE AND ASPHALT CONCRETE PAVEMENT**

Applicant has set aside approximately 10 acres within the Petition Area to be used for the processing and recycling of PCC and ACP. See **Exhibit 6**. The raw PCC and ACP will be stored within the designated portion of the Petition Area until a sufficient quantity has been collected, at which time Applicant will process and recycle the PCC and ACP. The processing may be done by a portable processing machine that Applicant would bring to the property as needed, or Applicant may install a processing machine within the Petition Area to remain in place for the life of the Special Permit. The proposed recycling of PCC and ACP will prevent those materials from taking up space in the landfill.

1 **PORTLAND CEMENT CONCRETE**

Applicant estimates that it may process 1,000 tons/year of PCC. Applicant operates a PCC recycling facility at its Kona quarry site near to Honokohau Harbor. Over the past 5 years approximately 125 tons/year of PCC has been processed at that site. The PCC recycled at the Kona quarry site does not include PCC from any large structures, such as would be expected should large concrete structures be torn down. Large concrete remodels or teardowns can generate several thousand tons of PCC for recycling in a short period of time. Should the

requested amendment to SP 833 be approved, Applicant anticipates phasing out its PCC recycling activities at the Kona site.

Recycling of PCC is a relatively simple process. It involves breaking, removing, and crushing existing concrete into a material with a specified size and quality. Product for recycling will be visually inspected prior to being accepted at the Petition Area. The only acceptable additions to the PCC that is accepted will be rebar and wire mesh. All rebar and wire mesh will be removed as part of the recycling process. Painted PCC will be tested in accordance with the DOH requirements to insure no hazardous materials are present before the materials are allowed to remain on the site. The PCC will be crushed and screened into a marketable product size. Processed materials will be tested in accordance with DOH standards, and then sold as fill material. Applicant anticipates that in most cases the product size will be 2½" or 1½".

All recycling will be done in accordance with the Solid Waste Permit that will be issued by the DOH. No chemicals are used in the recycling PCC. The byproducts from the PCC are rebar and steel mesh from the inside of the concrete. Applicant will provide that byproduct to a local metal recycler. Applicant anticipates that contractors will make use of the recycled PCC for road construction, fill material and other uses for which rock products are typically used.

2 ASPHALT CONCRETE PAVEMENT

Applicant anticipates that it may process 1,000 tons/year of ACP, based in part upon discussions with local paving contractors. The process for recycling the ACP is substantially similar to that used for the PCC. For example, asphalt concrete that is removed from pavement will be stockpiled at the Petition Area until a sufficient amount has accumulated. At that point, the ACP will be crushed and screened to a size of ¾". Applicant estimates that the crushing and screening will take place less than once a year, and perhaps once every 5 years, depending upon

the amount of PCC and ACP is brought to the Petition Area. However, the DOH will set the limits on the amount of material that can be stored prior to processing.

All recycling will be done in accordance with the Solid Waste Permit that will be issued by the DOH. No chemicals are used in the recycling of ACP. The ACP will be turned into recycled asphalt pavement ("**RAP**"). No byproducts are produced by the recycling ACP into RAP. Applicant anticipates that the RAP will be used for road and parking lot surfacing and stabilization. RAP is less expensive than the more traditional asphalt concrete used for these purposes.

IV **PROPERTY DESCRIPTION**

The Petition Area consists of 219.990 acres within a 243.7940-acre parcel designated as TMK (3) 6-8-001: 066, aka Lot 3-B-2. See **Exhibit 6**. The Petition Area has been approved for quarry operations since 1993, and has been in active quarry use since 1999. Approximately 95% of the Petition Area has been quarried to a depth of approximately five feet. Currently active quarry uses are taking place within the northwest corner of the Petition Area, to a depth of 40 to 45 feet.

A **ACCESS, PARKING AND TRAFFIC**

Access to the Petition Area is from a private road that connects to Waikoloa Road, which is a two-lane paved County roadway. The private quarry access road, which is described as Easement 3 (7.794 acres) on Subdivision 07-000696 (see Exhibit 2), enters Lot 3-B-2 at the northwest corner of the Lot. The quarry road has 26-foot wide pavement within a 100-foot right-of-way. The private quarry access road is also used to access the adjacent contractors' baseyard, which is allowed under the GBI Permit. Entrance to the quarry is gated. Parking for Applicant's employees is, and will continue to be, provided within the Petition Area.

The current activities at the Petition Area generate little traffic and the proposed additional activities are not expected to generate any significant additional traffic. Quarry employees typically arrive before 7 a.m. and leave after 5:30 p.m.

Current quarrying activities average 8 truckloads a day of aggregate leaving the site. This average is based upon the annual tonnage of aggregate, which amounts are established by the load station located by the site entry.

Current activities generate approximately 36,360 tons of aggregate per year. The trucks that deliver and remove the aggregate product have a 12 to 24 ton capacity, and average 18 tons per load. Dividing the amount of aggregate by 18 ton truckloads results in 2020 truckloads/year, which averages out to 8 truckloads each business day (assuming 250 business days/year).

The greenwaste composting activities have averaged between 159 to 1,300 tons/year from 2008 through mid-2013. Between July 1, 2014 and June 30, 2015, approximately 179.28 tons of greenwaste were delivered to the Petition Area. Applicant's DOH Permit allows for under 3,000 tons/year. Applicant expects the amount of greenwaste processed at the Petition Area to increase to that maximum amount. Under the most aggressive estimates, assuming 2,999 tons of greenwaste a year, the peak hour employee vehicle traffic from greenwaste activities is anticipated to be minimal. At most two employees would be needed to operate the greenwaste operations. The greenwaste composting business is not a "retail" operation where members of the public regularly come to drop off greenwaste or purchase compost. Therefore, few employees are needed and little commercial traffic is generated.

Applicant estimates that the PCC and ACP recycling will divert approximately 2,000 tons/year from local landfills. The addition of 2,000 tons of material coming onto the Petition Area each year amounts to less than 1 additional truckload per business day.

Even under the most aggressive traffic estimates, the existing and proposed uses at the Petition Area will not generate fifty or more peak hour trips. *See* Hawaii County Code Section 25-2-46. Although the County's concurrency requirements under Section 25-2-46 only require the preparation of a traffic impact analysis report ("**TIAR**") for applications for zoning amendments, and not for applications to extend or modify Special Permits, Applicant has nevertheless reviewed the TIAR requirements under Section 25-2-26 to confirm that no TIAR is needed in order to process this proposed amendment to SP 833.

Hawaii County Code Section 25-2-46(d) requires a TIAR to be prepared for any zoning amendment that can generate 50 or more peak hour trips. Peak hour trips are understood to mean trips between 7:00 a.m. and 9:00 a.m., and between 4:00 p.m. and 6:00 p.m.

Current quarry and greenwaste composting activities at the Petition Area involve very little peak hour traffic. For most of the year the quarry does not require on-site employees. Instead, trucks are dispatched from off-site to the Petition Area to load aggregate, which is then delivered to end users. For a period of approximately three months during the year when active rock crushing and quarrying activities are taking place, the Applicant has six or seven employees on site. These employees arrive before 7:00 a.m. and leave the site between 3:30 p.m. and 4:00 p.m. The current greenwaste processing activities require one employee who arrives by 7:00 a.m. and leaves the site around 3:30 p.m., and is therefore not on the road during the peak traffic hours.

With the addition of PCC recycling and ACP recycling, and an increase in greenwaste composting activities to the maximum allowed under the DOH permit, Applicant's maximum anticipated a.m. and p.m. peak hour trips would be 10 to 11, but as described above, few employees actually arrive at, or exit, the Petition Area during the a.m. or p.m. peak hours. Most

traffic in and out of the Petition Area occurs throughout the day and not allocated solely to peak hours, or to any specific non-peak hours. These vehicles include employees, truck drivers that enter the site to pick up aggregate and leave with the aggregate, and the occasional contractor or commercial purchaser of aggregate.

B NUMBER OF EMPLOYEES / NUMBER OF CLIENTELE

Employees work at the quarry as needed, and employees are most often not needed on site except during periods of rock crushing, which take place on average during three months during the year. Most often the trucks that enter and leave the site load their materials at the aggregate stock piles in various locations around the Petition Area, where the materials are weighed and a load ticket is printed from a remote station located at Applicant's Waimea operations site. Occasionally Applicant sends a single employee down to operate the loader if several truckloads of materials are anticipated to go out on a particular day. During periods of rock crushing, which typically run for up to six weeks at a time, a full crew of eight to ten employees are on site.

No additional employees are anticipated to be needed in order to operate the ACP and PCC recycling operations. Applicant plans to direct 6 employees toward the recycling plant, which is anticipated to be operated once every five to ten years, depending upon the volume of ACP and PCC on site, and the requirements that will be imposed by the DOH in the issuance of the Solid Waste Permit.

In addition to the quarrying and recycling activities, the greenwaste composting activities require one person on site. Even if the greenwaste composting was increased to the maximum (which is less than 3,000 tons/year), the anticipated employees needed at the Petition Area would be no more than two. The greenwaste composting business is not a "retail" operation where

members of the public regularly come to drop off greenwaste or purchase compost. Therefore, few employees are needed.

C **DAYS AND HOURS OF OPERATION**

SP 833 authorized quarry activity between 6:30 am to 5:30 pm, and allows noise-generating activities to begin no earlier than 7:30 am. Applicant's operations conform to these requirements. The quarry is open Monday through Friday, and only very rarely on Saturday. The same hours will be maintained for the proposed additional uses at the Petition Area.

D **TIMETABLE**

Applicant intends to continue quarrying operations and greenwaste composting through the term of SP 833, as amended. Applicant intends to initiate the recycling of ACP and PCC upon receipt of a solid waste permit from the DOH.

V **DESCRIPTION OF AREA AND SURROUNDING PROPERTIES**

The Petition Area is situated roughly 4 miles mauka of the beachfront at 'Anaeho'omalu Bay, 2 miles mauka of Queen Kaahumanu Highway and 2 miles southwest of Waikoloa Village. The Pu'uana'hulu Landfill is approximately 1 mile to the south. The Petition Area is bounded at its south end by a transmission line corridor and unpaved access road, and the east, west and north sides of the Petition Area are adjacent to undeveloped land. The property that borders the Petition Area to the north and east, TMK (3) 6-8-001:067, contains an archaeological preserve containing nineteen sites within a roughly 30 acre area.

The Petition Area is within the State Land Use Agricultural District, and is surrounded by lands that are also within the Agricultural District. *See* Applicant's **Exhibit 8** attached hereto and incorporated herein by reference. The Petition Area is zoned by the County as Agricultural A-

5a, and is surrounded by lands that are also zoned A-5a, as shown on Applicant's Exhibit 9, attached hereto and incorporated herein by reference.

A **FLOOD INSURANCE RATE MAP DESIGNATION**

The Petition Area is within FIRM Zone X, which is an area determined to be outside of the 0.2% annual chance floodplain. See Applicant's Exhibit 10 attached hereto and incorporated herein by reference.

B **ARCHAEOLOGICAL AND HISTORICAL RESOURCES**

An Archaeological Inventory Survey ("AIS") was prepared by PHRI in 1991 (Archaeological Inventory Survey Waikoloa Beach Resort Reserve Lands 300-Acre Quarry Site, Jensen and Burgett, 1991). The AIS identified 19 sites located along the margin of a ridge in the northern portion of the 300-acre property. Five of the sites were assessed as significant for information content; none of those sites represented unique, one-of-a-kind sites, or excellent examples of a site type. Thirteen of the sites were assessed to be significant for information value, and potentially significant because of possible burials. One site, a trail, was assessed as significant for informational purposes and cultural value. None of these 19 sites are located within the Petition Area.

As a result of the PHRI AIS, all 19 sites were preserved "as is." A 50 foot wide buffer area was created around the collective sites, and the boundary of the Petition Area was located outside of the buffer area. In light of the AIS, SP 833 was issued with the following condition of approval:

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.

All of these conditions have been satisfied. Upon information and belief, by letter dated November 2, 1992, the State Historic Preservation Division ("**SHPD**") informed the Planning Director that approval by the Hawaii Island Burial Council would be required only if the area where the sites are located was to be developed. In light of the fact that no burial sites or possible burial sites are located within the Petition Area, and that all such sites are located adjacent to the Petition Area, in a preservation area that has been preserved "as-is", and the fact that the County issued Final Plan Approval in December 1996 (*see* Applicant's Exhibit 5) the requirements under condition 6.A. and 6.B have been satisfied.

The Applicant was notified of the significance of the preservation area. The Applicant also informed all construction and operations personnel of the significance of the preservation area. On May 10, 1999, Robert B. Rechtman, Ph.D., performed archaeological monitoring in order to direct the construction crew to avoid the buffer area that was established around the preservation area. *See* Dr. Rechtman's letter enclosed as Applicant's **Exhibit 11**. As confirmed by Dr. Rechtman, the quarry access road is located well makai of the buffer zone, and the northern boundary of the Petition Area is approximately 50 meters south of the buffer zone. As such, the Petition Area is entirely outside of the preservation area, and entirely outside of the buffer zone.

In June 2015 ASM Affiliates, by Dr. Robert Rechtman, Ph.D. and Teresa Gotay, prepared An Archaeological Assessment Survey of West Hawaii Concrete's Waikoloa Quarry ("AAS"). A copy of that AAS, which was submitted to SHPD Hilo on June 18, 2015, is attached hereto and incorporated herein as Applicant's **Exhibit 12**. Attached hereto and incorporated herein by reference as **Exhibit 12A** is SHPD's letter dated August 12, 2015, confirming the recommendation under the AAS that no further archeological work is necessary within the project area.

The AAS describes the Petition Area as being situated at elevations ranging between 694 and 925 feet above sea level, within two lava flows that emanated from Mauna Loa known as the Kanikū Lava Flow. Both flows are rugged expanses of 'a'ā with near complete absence of soil. The earliest flow dates from between 3,000 and 5,000 years ago while the more recent flow occurred between 1,500 to 3,000 years ago. Most of the Kanikū flow within the Petition Area has been altered by the ground disturbance associated with the quarry operations.

On May 20, 2015, Robert B. Rechtman, Ph.D., Teresa Gotay, M.A. and Layne Krause, B.A. performed a field survey of the Petition Area. No archaeological features or portable cultural material was encountered during the pedestrian survey. A small amount of metal shrapnel was observed, which is likely related to the former use of the Waikōloa Maneuver Area by the U.S. Military. Given the negative findings of the AAS, which findings are supported by the earlier AIS, the consultants concluded that that the proposed extension and amendment to SP 833 will not significantly impact any known historic properties. No further historic preservation work was recommended. As confirmed by SHPD, Applicant's project should not affect or impair any valued historical resources.

C CULTURAL RESOURCES

Article XII, section 7, of the Hawai'i State Constitution requires the State and its political subdivisions to protect native Hawaiian traditional and customary rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n. 43, cert. denied, 517 U.S. 1163 (1996); *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000). In addition to a review of any historical resources within the Petition Area, Applicant had prepared an analysis to identify whether any valued cultural or natural resources are present within the Petition Area, and to identify the extent to which any traditional and customary native Hawaii rights are being, or have been, exercised within the Petition Area. No specific valued natural or cultural resources have been identified within the Petition Area, and no evidence has been identified to indicate that traditional and customary cultural practices are being exercised within the Petition Area currently, or have been in the past.

Attached hereto and incorporated herein as Applicant's **Exhibit 13** is a report entitled West Hawaii Concrete Waikoloa Quarry *Ka Pa'akai* Discussion (July 2015) by Robert B. Rechtman, Ph.D. of ASM Affiliates ("**Ka Pa'akai Report**"). The *Ka Pa'akai Report* concludes that there are no specific valued natural or cultural resources within the Petition Area, and that there is no evidence of any traditional or customary practices being exercised within the Petition Area. The *Ka Pa'akai Report* reviewed historical, archaeological and cultural reports that were prepared for properties in the vicinity of the Petition Area.

A Section 106 study prepared in 2005 for the Saddle Road Extension Project, which included consultation with 18 individuals, none of whom identified any traditional or customary

practices taking place within the vicinity of the Petition Area. Other cultural studies done on lands just to the north of the Petition Area came to a similar conclusion.

Prior studies have shown that the Waikoloa area contains two significant sources of cultural resources. There are pu'u and trails. As confirmed in the Ka Pa'akai Report, the Petition Area does not contain any trails or pu'u and none are in proximity to the Petition Area. Applicant's project should not affect or impair any valued cultural or natural resources, or the practice of any traditional or customary native Hawaiian rights.

D **SOILS**

The soils within the Petition Area are not well suited for agricultural uses. The U.S.D.A. soil types found within the Petition Area are Lave Flows, Aa (rLV). This is a rough, broken lava that has little to no soil coverage and is bare of vegetation.

The Land Study Bureau soil rating within the Petition Area is "E" which indicates very poor productivity. See Applicant's **Exhibit 14**. The ALISH rating for the Petition Area is unclassified, further indicating that the land is not important for agricultural production. See Applicant's **Exhibit 15**.

E **FLORAL AND FAUNAL RESOURCES**

No endangered, threatened or candidate plant or animal species are within the Petition Area. At the time that SP 833 was issued there was a concern that the pololei fern, *Ophioglossum concinnum*, might be located within the Petition Area. As such, under condition 6 the Planning Commission and LUC required the Applicant to employ mitigation measures for the fern if required by the State Department of Land and Natural Resources.

By letter dated October 20, 1993, the U.S. Fish & Wildlife Service confirmed that the pololei fern was not endangered or threatened, and was no longer being considered for listing under the Endangered Species Act. Therefore no mitigation measures were required.

Although the virtually the entire Petition Area has been cleared and mined, leaving an unwelcoming habitat for plants or animals, in an abundance of caution Applicant had a General Botanical Survey and Vertebrate Fauna Assessment prepared for the Petition Area in June 2015 ("**Biological Assessment**"), a copy of which is attached hereto and incorporated herein as Applicant's **Exhibit 16**. The Biological Assessment was prepared by Ron Terry, Ph.D. and Patrick J. Hart, Ph.D. of Geometrician Associates, LLC.

The Biological Assessment confirmed that no threatened or endangered plant species are located within the Petition Area, and that no portion of the Petition Area is designated as critical habitat. The Biological Assessment noted that the history of heavy, continuous disturbance coupled with the lowland context, has resulted in a flora and vegetation within the Petition Area that has little value in terms of conserving native vegetation or threatened or endangered plant species. The only large tree (i.e., over 15 feet tall) within the Petition Area is a single kiawe tree. As such, no adverse botanical impacts on the property are expected as a result of the continuing and proposed uses.

The five bird species observed are all common, non-native, birds. Goats were observed on the property. No other mammals were seen, but the consultants had expected that the small Indian mongoose, mice, rates and perhaps feral cats would be seen. The Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) was not observed, but the consultants noted that the Hawaiian Hoary Bat is present in many areas on the island of Hawaii.

Although no threatened or endangered species were observed, the consultants recommended that Applicant follow certain minimization measures to avoid potential impacts to native birds and the Hawaiian Hoary Bat. Those measures are: (i) limiting the removal or trimming of trees taller than 15 feet so that such actions are not taken during the bat birthing and pup rearing season (June 1 through September 15); (ii) no construction or unshielded equipment maintenance lighting after dark between the months of April and October; (iii) all permanent lighting should be shielded in strict conformance with the Hawai'i County Outdoor Lighting Ordinance (Hawai'i County Code Chapter 9, Article 14), which requires shielding of exterior lights so as to lower the ambient glare caused by unshielded lighting.

While the Biological Assessment determined that no threatened or endangered species were located within the Petition Area, Applicant had an additional survey conducted in order to confirm that the Petition Area is free to the Blackburn's Sphinx Moth (*Manduca blackburni*) ("**BSM**"). The BSM's preferred host plant is a native dry forest canopy tree (aiea or *Nothocestrum breviflorum*). However, the BSM is known to use the tree tobacco plant (*Nicotiana glauca*), an alien invasive weed, as a host plant, particularly during the BSM egg and larval stages. The tree tobacco plant is common in North Kona and other dry areas of Hawaii, and tree tobacco had been seen within the quarry property.

To document the results of the BSM survey, a report titled *Blackburn's Sphinx Moth Surveys Conducted for West Hawaii Concrete's Waikoloa Quarry, South Kohala District, Island of Hawai'i* was prepared by Reginald E. David of Rana Biological Consulting and Eric B. Guinther of AECOS Consultants, a copy of which is attached hereto as Applicant's **Exhibit 17**.

The consultants made two visits to the Petition Area. An initial visit was made in early May, and extensive fieldwork was done in early June, 2015. The consultants were tasked with

inspecting all tree tobacco plants on site for any BSM eggs and larvae, and to identify any tree tobacco plants that showed browse marks of a size and scale that were indicative of BSM larvae. The consultants noted that the tree tobacco plants within the Petition Area were healthy, with thick green leaves, which would be attractive to BSM if any were in the area.

The consultants conducted an intensive survey of an approximately 60-acre portion of the Petition Area and confirmed that not BSM were present, and no evidence of browsing was observed on any of the tree tobacco plants on site.

F **WATER USE, GROUNDWATER AND SURFACE WATER RESOURCES**

The continuation of quarry and greenwaste composting activities and the addition of recycling activities is not expected to result in any significant increase of water demand at the Petition Area. Presently water is used at the Petition Area to control dust during quarrying activities, and to moisturize the compost pile. This use averages 3,300 gallons per day. With the addition of the recycling activities there will be an occasional increase of water use during the actual processing of the ACP and PCC. The increase will be in the order of ten percent per annum. No new water sources will be required for the proposed amendment to SP 833.

It is not anticipated that the existing and proposed uses will have any impact on groundwater resources. Sufficient water is available for the additional uses, and the existing and proposed activities do not generate pollutants that could be discharged to groundwater. A report titled Hydrologic Assessment of Present and Proposed Future Uses of the West Hawaii Concrete Quarry Site prepared by Tom Nance Water Resource Engineering ("**Water Assessment**") is attached hereto and incorporated herein as Applicant's **Exhibit 18**.

The Water Assessment focuses on potential impacts to groundwater as a result of the existing and proposed uses. The groundwater beneath the Petition Area is approximately four

feet above sea level, and the Petition Area is between 680 to 920 feet above sea level. The Petition Area is located in the Anaehoomalu Aquifer System Area as delineated by the State Commission on Water Resource Management ("CWRM"). At the quarry site, the delineated aquifer is 5.7 miles wide and the quarry is situated midway across that width. The CWRM has set the sustainable yield of the Anaehoomalu Aquifer System Area based on a calculated recharge of 69 million gallons per day ("MGD") over its 291 square mile area. There are no operating wells upgradient of the Petition Area, so this recharge rate translates to a flow on the order of 12 MGD per mile of width beneath the Petition Area. More recent recharge calculations put the total recharge at 182 MGD. If correct, that recharge would suggest a flowrate of 32 MGD per mile beneath the Petition Area. However, TNWRE's analysis is that the actual flowrate is significant less. TNWRE estimates that the flowrate is no more than 8 MGD per mile. This is based upon the performance of wells located downgradient of the Petition Area, and the one unused well located upgradient.

The Water Assessment determined that the present and proposed uses at the Petition Area will result in no consequential change to the groundwater flowrate or shoreline discharge. The two potential sources of impacts to flowrate are the water wells that currently serve the Petition Area, and the amount of water that may be discharged along the shoreline due to the use of water onsite that percolates to the groundwater flowing beneath the Petition Area.

On an annual average basis, the private wells that supply the Petition Area pump about 6.0 MGD, and the water used within the Petition Area is 0.0033 MGD or 0.055 percent of that pumpage. The possible additional water demand arising from the occasional recycling operations is expected to be no more than 10 percent. This would increase the water usage at the Petition Area by no more than 0.06 percent of the well pumpage, which far too small to be

detectable to have any impact on downstream use of the groundwater naturally flowing to and discharging along the shoreline.

With respect to the groundwater flowing directly beneath the Petition Area, present onsite water use is 0.0033 MGD, of which a conservative estimate is that 0.00033 MGD percolates to the groundwater beneath the Petition Area. The slight projected increase in water use will increase these figures to 0.0036 MGD and 0.00036 MGD. This would amount to an increase on the order of 0.006 to 0.007 percent to groundwater flowing beneath the Petition Area. This would have an inconsequential change to the current flow, and an even smaller change to the potential discharge of groundwater along the Anaehoomalu to Makaiwa shoreline.

As mentioned in the Water Assessment, the present and proposed future activities within the Petition Area will have no impact on surface water. The LUC previously found that no well-defined drainageways exist within the Petition Area. *See* LUC D&O, FOF 50. The Water Assessment acknowledges that the USGS Puu Hinai quadrangle map shows a blue line indicating a surface water course passing along the north side of the Petition Area with continuous definition to and through a large culvert in Queen Kaahumanu Highway. However, there is no field evidence anywhere along this alleged water course that it has ever carried surface runoff. As confirmed by the Water Assessment, no present or proposed activities at the Petition Area will change that.

The conclusions reached in the Water Assessment is that the continuation of the quarrying operation, the composting, and the intermittent processing of PCC and ACP for recycling will have no detectable or actual significant impact on the underlying groundwater.

G **PUBLIC ACCESS**

There is no known public access to the mountains or the shoreline that traverses through the Petition Area. *See* Ka Pa'akai Report attached as Applicant's Exhibit 13.

H **AIR AND NOISE QUALITY**

Over the 20 years of operations the Applicant has not received any complaints about air quality, dust or noise due to operations at the quarry. With respect to air quality, the DOH requires Applicant to control fugitive dust. Applicant uses a water truck for this purpose and sprays water on its crushing equipment during periods of rock crushing.

With respect to noise control, daily operations at the Petition Area are relatively limited. However, during periods of rock crushing, noise could be a concern. In this case, there have not been any noise complaints, in part due to the fact that the closest residence is approximately 2 miles from the Petition Area. In addition, the nature of the quarry is such that the areas now used for blasting and crushing, and proposed for such uses in the future, are surrounded by 40 foot high walls, which work as sound buffers.

I **SCENIC AND OPEN SPACE RESOURCES**

It was previously determined that the quarry could have minimal impacts on views from the Waikoloa Beach Resort and from Queen Kaahumanu Highway toward Mauna Kea. However, the quarry is not visible from Waikoloa Road or Waikoloa Village because of distance and because it is screened by a bluff. *See* LUC D&O, FOF 42. The continuation of the quarry operations and the additional uses will not alter that analysis.

Applicant's **Exhibit 19** shows photographs taken in July 2015 from various vantage points identified on the map made a part thereof. Applicant's Exhibit 19 demonstrates that the

current and proposed activities within the Petition Area have no impact on views or open space resources.

J **PUBLIC FACILITIES AND SERVICES**

The current and proposed uses at the Petition Area generate no demands on public facilities and services. Water is provided by a private water company. Wastewater demands, which are fairly minimal, are addressed through the use of chemical toilets that are provided by Applicant. Electricity is provided through solar power, and Applicant intends to use a generator to power the recycling plant for the ACP and PCC.

Continuing the current uses and expanded the uses to include recycling will not require additional police services. There is no history of fire (wildfires or otherwise) at the Petition Area. The additional uses being requested under this amendment to SP 833 will not change that.

VI **STATE AND COUNTY LAND USE PLANS AND DESIGNATIONS**

A **STATE LAND USE DISTRICT**

The Petition Area is within the State Land Use Agricultural District, as shown on Applicant's Exhibit 8. Under Chapter 205, HRS, when establishing the boundaries of the State Agricultural Districts, "the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation." HRS § 205-2(a)(3).

The legislature recognized that some lands could be placed within the State Agricultural District, but not especially well suited for agricultural activities. In addition, certain activities could be considered reasonable, although not strictly agricultural in nature. In light of these considerations, the legislature provided for a Special Permit process to allow the various Planning Commissions to permit certain "unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified." HRS § 205-6(a).

The LUC already determined that the establishment of the quarry and related uses constituted an "unusual and reasonable" use as defined under HRS § 205-6. *See* LUC D&O, COL. Continuing the quarry operations would also be an unusual and reasonable use within the Petition Area. Similarly, the addition of PCC and ACP recycling is not agricultural in nature, and is therefore unusual, but it is reasonable in light of the fact that the Petition Area is not well suited for agricultural production.

The proposed greenwaste activities within the Petition Area are somewhat different in that greenwaste composting is arguably a suitable agricultural-type use, and therefore may not be considered an "unusual" use within the State Agricultural District. However, Applicant requests that the Planning Commission and LUC formally authorize the greenwaste composting activities within the Petition Area so that Applicant can be assured of its right to continue greenwaste composting in the future. This concern arises based upon a bill (Senate Bill No. 320) that was before the legislature in 2015.

Senate Bill No. 320 was not passed into law, but it went through the Senate and passed third reading in the House of Representatives, indicating that the measure had support, which could mean that similar legislation may be proposed in the future. SB No. 320 proposed to add composting operations of off-site materials as a permitted use within the State Agricultural District, provided that a Special Permit was obtained.³ As indicated above, Applicant obtained a Solid Waste Management Permit from the DOH in 2009, which allows for the current greenwaste composting at the Petition Area. The County Planning Department has already confirmed that the greenwaste composting approved by the DOH for the Petition Area under

³ SB No. 320 also sought to limit composting operations on State Agricultural District lands with a LSB rating of A or B to on-site composting uses, and to limit those uses to a land area of no more than one acre or 10% of the land, whichever was lesser.

Permit # CO-0012-09 is permitted under County zoning. See Attachment P-5 of Applicant's Exhibit 7. Nevertheless, Applicant wishes to formally request that the Planning Commission, and later the LUC, authorize the ongoing greenwaste activities under this amendment to SP 833.

B CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN

HRS §205-16 provides that "No amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawaii state plan." The proposed amendment to SP 833 is consistent with applicable goals, objectives and policies of the Hawai'i State Plan, HRS Chapter 226.

One of the State goals is to achieve a strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaii's present and future generations. See HRS § 226-4(1). Continuing the quarry operations and increasing the permitted activities within the Petition Area is consistent with this goal in that Applicant's business will continue to provide employment opportunities to Hawaii residents, and supply materials that can be used in development, landscaping, and in the repair of roads and other facilities.

The proposed amendment to SP 833 is consistent with the following objectives and policies of the Hawai'i State Plan for population, the economy, agriculture and the physical environment:

HRS §226-5: Objectives and Policies for Population

(a) It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.

(b) To achieve the population objective, it shall be the policy of this State to:

(1) Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue

their physical, social, and economic aspirations while recognizing the unique needs of each county.

(2) Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.

** * **

(7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

The requested amendment to SP 833 will allow the existing employment opportunities from the quarry to continue, and will increase economic opportunities within Hawaii County by making construction materials more readily available for use in local projects.

HRS §226-6: Objectives and Policies for the economy - In general

(a) Planning for the State's economy in general shall be directed toward achievement of the following objectives:

(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people, while at the same time stimulating the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.

(b) To achieve the general economic objectives, it shall be the policy of this State to:

(1) Promote and encourage entrepreneurship within Hawaii by residents and nonresidents of the State.

** * **

(7) Expand existing markets and penetrate new markets for Hawaii's products and services.

** * **

(9) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.

** * **

(12) Encourage innovative activities that may not be labor-intensive, but may otherwise contribute to the economy of Hawaii.

The requested amendment to SP 833 will continue the economic benefits presently derived from the quarry, and will provide additional economic benefits through the establishment

of a recycling facility that will avoid the use of landfills, and will make new construction and repair materials available for local markets.

HRS §226-7: Policies for the economy - Agriculture

(b) To achieve the agriculture objectives, it shall be the policy of this State to:

(2) Encourage agriculture by making best use of natural resources.

* * *

(10) Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs.

(16) Facilitate the transition of agricultural lands in economically nonfeasible agricultural production to economically viable agricultural uses.

The Petition Area is not suited for agricultural activities. The soils are extremely poor, the climate is dry and the water availability is limited. The quarry, greenwaste composting and recycling operations will continue to make economically productive use of the Agricultural District land, without the added pressure of seeking to reclassifying additional State Agricultural District lands into State Urban District lands.

HRS §226-11: Objectives and Policies for the physical environment - Land based, shoreline, and marine resources

(a) Planning for the State's physical environment with regard to land-based, shoreline, and marine resources shall be directed towards achievement of the following objectives:

(1) Prudent use of Hawaii's land-based, shoreline, and marine resources.

(2) Effective protection of Hawaii's unique and fragile environmental resources.

(b) To achieve the land-based, shoreline, and marine resources objectives, it shall be the policy of this State to:

* * *

(2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.

(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

* * *

(6) Encourage the protection of rare or endangered plant and animal species and habitats native to Hawaii.

(8) Pursue compatible relationships among activities, facilities, and natural resources.

Use of the Petition Area as a quarry, greenwaste composting site and ACP and PCC recycling operation is consistent with these goals and objectives. The Petition Area is far from areas of existing and proposed future residential or resort development. Quarrying operations have been underway for 20 years without complaint, demonstrating that the use is compatible with the area at this time.

C COUNTY GENERAL PLAN

The Petition Area is designated as Urban Expansion on the County General Plan Land Use Pattern Allocation Guide. See Applicant's **Exhibit 20**, attached hereto and incorporated herein by reference. Urban Expansion allows for a mix of high, medium and low density residential, industrial, industrial-commercial and open land uses. The proposed amendment to SP 833 is consistent with this designation.

D SOUTH KOHALA COMMUNITY DEVELOPMENT PLAN

The Petition Area is within the jurisdiction of the South Kohala Community Development Plan ("SKCDP"), Waikoloa Village Plan area. Figure 5.3 of the SKCDP is the Waikoloa Village Conceptual Plan, which presents general policies and strategies for the long-range (20+ years) future of Waikoloa Village. A modified version of SKCDP Figure 5.3, identifying the Petition Area in white, is attached hereto as Applicant's **Exhibit 21**. The desire of the community is to retain the Petition Area, and the lands surrounding the Petition Area, as status quo.

The SKCDP notes the desire to preserve Waikoloa's scenic views, landscapes and pu'u. The SKCDP notes that the pu'u named Hina'i in the vicinity of Waikoloa, and the several other pu'u in the area are being mined. The SKCDP recommends that the pu'u should be protected and

preserved in their natural state. There are no pu'u within the Petition Area as confirmed by the Ka Pa'akai Discussion. Therefore this strategy is not applicable within the Petition Area.

E **ZONING**

The Petition Area is zoned A-5a and is surrounded by properties also zoned A-5a. These surrounding properties are undeveloped. *See* Applicant's Exhibit 9.

VII **CONSISTENCY WITH OBJECTIVES UNDER CHAPTER 205, HAWAII REVISED STATUTES AND HAR §15-15-95**

The proposed amendment to SP 833 is not contrary to the objectives sought to be accomplished under HRS Chapter 205 and the related regulations. The Planning Commission and LUC already determined that the establishment of the quarry and related uses constituted an "unusual and reasonable" use as defined under HRS § 205-6. *See* LUC D&O, COL. Continuing the quarry operations would also be an unusual and reasonable use within the Petition Area. Similarly, the addition of PCC and ACP recycling is not agricultural in nature, and is therefore unusual, but it is reasonable in light of the fact that the Petition Area is not well suited for agricultural production. Acknowledging the existing greenwaste composting activities as a permitted use under SP 833 will ensure that this environmentally friendly activity, which is monitored by the DOH, can continue.

Article XI, Section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. The Petition Area is not classified as Important Agricultural Land under Part III of HRS chapter 205. The current requested amendment is not contrary to the objectives of Chapter 205, HRS, which seeks to protect lands that have a high potential of being agriculturally productive from inappropriate or premature development.

A **CONSISTENCY WITH OBJECTIVES UNDER CHAPTER 205A, HAWAII REVISED STATUTES**

The requested amendment to SP 833 is consistent with the objectives and policies of HRS Chapter 205A, the Coastal Zone Management Act, and the guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.

The Petition Area is not located within the Special Management Area. *See* Applicant's **Exhibit 22** attached hereto and incorporated herein by reference. The Petition Area is located more than three miles from the nearest shoreline and therefore will not be affected by coastal hazards and beach erosion, and will not negatively affect coastal ecosystems, marine resources, public access to the shoreline or shoreline recreational resources. *See* HRS § 205A-2(b).

Although the Petition Area is not within the Special Management Area, it is within the Coastal Zone Management Area. As evidenced by the AIS and AAS, the proposed amendment to SP 833 should have no effect on natural and manmade historic and prehistoric resources that are significant in Hawaiian and American history and culture. *See* HRS § 205A-2(b)(2); (c)(2).

The requested amendment will not have an adverse impact to traditional and customary Hawaii rights. The early biological assessments, and the Biological Assessment conducted in 2015 confirmed that no floral or faunal resources that are gathered by native Hawaiians are located within the Petition Area. As described in Applicant's Exhibit 13 (Ka Pa'akai Report), there is no evidence of any traditional and customary native Hawaiian rights being practiced within the Petition Area, nor any known valued cultural, historical or native resources within the Petition Area.

Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people. Article XI, Section 1, of the Hawai'i State Constitution states that all public natural

resources are held in trust by the State for the benefit of the people. When an agency is confronted with its duty to perform as a public trustee under the public trust doctrine, it must preserve the rights of present and future generations in the waters of the state. The agency's duty and authority is to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial use public benefit. *Kauai Springs v. Planning Comm'n of the Cnty. of Kauai*, 324 P.3d 951, 984, 133 Hawaii 141, 174 (2014). As addressed in the Water Assessment, the proposed amendment will not entail any significant use of, nor generate significant impacts to, groundwater resources.

B EFFECTS ON SURROUNDING PROPERTY

As discussed above, the Applicant has operated a quarry at the Petition Area for over 20 years without complaints from area residents. The closest residential development is Waikoloa Village, which is approximately two miles northeast of the Petition Area, and the Waikoloa Beach Resort area is a little over two miles makai of the Petition Area. See Applicant's Exhibit 19. The Petition Area is surrounded by vacant land, with the exception of the contractor's baseyard, which is immediately adjacent to the Petition Area. A heliport and wastewater treatment plan are located approximately two miles to the west.

C IMPACTS ON PUBLIC AGENCIES

The approval of the proposed amendment to SP 833 and the continuation of the quarry activities and additional activities does not trigger any requirements under Hawaii's environmental review law, HRS Chapter 343. The proposed amendment will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

Roads to the Petition Area were constructed by the Applicant several years ago and approved by the County Department of Public Works in 1996. The quarry and related operations require very little in terms of wastewater services, and what is needed is addressed through private chemical toilets. Water service is provided by a private water company, and no significant increase in water demand will occur as a result of the proposed amendment. Due to the topography of the Petition Area, the existence of man-made berms and the very high permeability of the surface lava, it is not physically possible for surface runoff to leave the Petition Area. The project does not put additional demands on existing public services.

D **UNUSUAL CONDITIONS, TRENDS AND NEEDS HAVE ARISEN SINCE THE LAND WAS FIRST PUT INTO THE STATE AGRICULTURAL DISTRICT**

Applicant has operated the quarry at the Petition Area for over 20 years. If anything, the pressure to retain Agricultural District land within the Agricultural District is stronger now than when the district boundaries were first put into place. Continuing the use of the property as a quarry, and with expanded uses such as greenwaste composting and recycling, will allow for productive use of this land, without perhaps prematurely seeking a district boundary amendment. The nature of the quarry is that it is not permanent. Once the requisite amount of rock is removed, the quarry will be closed. Therefore, it is not appropriate to seek reclassification into the Urban District for a use that is not intended to be permanent.

The other quarry that is operated in Waikoloa, by the pu'u Hina'i (Edwin DeLuz Trucking & Gravel, LLC, SP70-85), is anticipated to terminate operations in December 2015, pursuant to the conditions of approval on that Special Permit. If that quarry does cease operations, the need for Applicant's operations will be even stronger. Should that quarry not terminate operations, the need to provide an area where local contractors can obtain recycled materials is strong, and

anticipated to grow stronger and more builders and contractors seek to comply with requests to use recycled materials.

E **LAND IS UNSUITED FOR AGRICULTURAL PURPOSES**

Soils within the Petition Area are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau, and are unclassified by the Agricultural Lands of Importance to the State of Hawaii Map. *See* Applicant's Exhibits 14 and 15. Additionally, the U.S.D.A. Soil Survey Report identifies the soil type as Aa Lava (rLV), which is rough, broken lava with almost no soil or vegetative cover. In light of these characteristics, the Petition Area is not well suited for agricultural purposes.

F **PROPOSED USE WILL NOT SUBSTANTIALLY ALTER OR CHANGE THE ESSENTIAL CHARACTER OF THE LAND AND THE PRESENT USE**

The essential character of the Petition Area and surrounding lands is barren lava fields. The quarry has been located at the Petition Area for over 20 years, without complaints, and is adjacent to a contractor's baseyard. As such, the requested amendment will not alter or change the essential character of the land and the present use.

G **PROPOSED USE IS NOT CONTRARY TO THE GENERAL OR THE COMMUNITY DEVELOPMENT PLAN**

The proposed amendment to SP 833 is consistent with the General Plan and the SKCDP. The General Plan Land Use Pattern Allocation Guide Map component of the General Plan is a representation of the goals and policies to guide coordinated growth and development within the County of Hawaii. The Petition Area is located within an area designated as Urban Expansion on the General Plan LUPAG Map. This allows for industrial uses of land where new settlements may be desirable, but where specific settlement patterns and mixes of uses have not yet been determined.

In addition to consistency with the Urban Expansion designation, the proposed amendment is also consistent with certain goals and policies of the General Plan. The Land Use Element: Industrial goal states that industrial activities may be located close to raw materials or key resources. Also, that industrial development shall be located in areas adequately serviced by transportation, utilities and other essential infrastructure. The quarry and related uses meet these goals. It also supports the Economic Element of the General Plan by providing for diversification of the economy by strengthening existing industries (the quarry) and attracting new endeavors (the ACP and PCC recycling).

Under the SKCDP the Petition Area is proposed to remain zoned Agricultural for the long-range future. The requested amendment to SP 833 is consistent with that proposition. In addition, the existing and proposed activities within the Petition Area do not interfere with scenic views, and do not alter any pu'u, the protection of which is a concern under the SKCDP.

VIII CONCLUSION

Applicant respectfully requests approval of an amendment to Special Permit No. 833, which was issued in January 1993 and allows the 219.990-acre 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. The term of SP 833 ends on December 31, 2018. However, the Applicant has invested significant resources in establishing a quarry at the Petition Area, and requests permission to continue the quarry operations until 2043 or longer, i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063, pending the outcome of this Request for Modification To and Extension of Special Permit No. 833.

In addition, Applicant respectfully requests permission to incorporate recycling activities at the Petition Area for Portland cement concrete and for asphalt concrete pavement. The onsite storage and recycling of these materials will divert these materials from local landfills, and provide high-quality, lower cost, recycled materials that can be used by local builders and road repair crews. Applicant also asks that the Planning Commission and Land Use Commission acknowledge and approve Applicant's greenwaste compositing operations, which have been authorized and permitted by the State Department of Health.



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Dated: Honolulu, Hawai'i, September 14,
2015