

**COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION**

WHC, LTD.

AMENDMENT TO SPECIAL PERMIT NO. 833 (DOCKET NO. 92-000001)

Upon review of the request against the guidelines for amending a Special Permit, the Planning Director is recommending that the Planning Commission forward a **favorable recommendation** of the amendment requests for Special Permit No. 833 to the State Land Use Commission. Since this recommendation is made without the benefit of public testimony, the Planning Director reserves the right to modify and/or alter this position based upon additional information presented at the public hearing. This favorable recommendation is based upon the following findings:

The applicant, WHC, Ltd., is requesting several amendments to Special Permit No. 833. Special Permit No. 833 was approved by the State Land Use Commission on January 19, 1993 to allow the establishment of a quarry operation and related uses, including blasting, drilling, rock crushing and screening, concrete ready-mix batching, pre-casting, asphaltic concrete products manufacturing, equipment and materials storage and repair, and other necessary uses and activities related to providing a source of rock aggregate and concrete and asphaltic products. Condition No. 12 limited the life of the permit until December 31, 2010. The permit was amended on February 26, 1999, which included an amendment to Condition No. 12 to extend the life of the permit until December 31, 2018. The current requested amendments include the following:

- 1) An amendment to Condition No. 12 to extend the life of the permit from December 31, 2018 until December 31, 2043, or a longer period of time (2063).

Condition No. 12 currently states:

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

- 2) Additionally, the applicant is requesting that greenwaste composting be permitted on a portion of the subject property; and

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- 3) Lastly, the applicant is requesting to allow for the processing and recycling of Portland Cement Concrete (PCC) and Asphalt Concrete Pavement (ACP) on a portion of the subject property.

The applicant has successfully operated a quarry at the petition area for 20 years, and wishes to continue those operations for at least 25 additional years or longer. Although material has been removed to a depth of approximately 5 feet from most of the 219.990-acre petition area, the property contains a great deal of additional materials to be quarried. Additionally, the applicant wishes to conduct recycling activities in the petition area, including the recycling of Portland cement concrete and asphalt concrete pavement, and greenwaste composting activities.

The Planning Director recommends that the Planning Commission send a favorable recommendation to the State Land Use Commission for the proposed amendments. For the time extension request, it is recommended to extend the life of the permit until 2043 and not a longer period of time. This project site and surrounding area is located within the General Plan LUPAG map's Urban Expansion designation, which encourages urban growth in the area. In the future, this area has the potential of accommodating urban growth that could conflict with the quarry operations. Additionally, the General Plan and the South Kohala Community Development Plan will go through updates that may not support the continued quarry use of this area. By allowing the time extension until 2043, the applicant will be required submit another time extension request to continue operations that will be reviewed for compliance with the General Plan, the Community Development Plan and address any potential conflicts with new urban settlement patterns in this area at that time.

Additionally, the proposed requests 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 and materials storage and repair, and other necessary uses and activities related to providing a source of rock aggregate and concrete and asphaltic products. The

allowance of these additional uses will help reduce these materials from being dumped into the local landfill and will allow them to be reused and recycled.

A favorable recommendation of these requests would not be contrary to the General Plan or the Zoning Code. The amendment request to extend the life of the permit until December 31, 2043, and to add greenwaste composting activities and the recycling of Portland cement concrete and asphalt concrete pavement would not be contrary to the General Plan or the Zoning Code.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The General Plan LUPAG Map designation for the project site is Urban Expansion, which allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined.

Quarries must be located in locations where there is an abundance of raw materials. For this reason, while industrial in character, quarries cannot be confined to Industrial-designated areas, as evidenced by the granting of Special Permits for quarries islandwide. The project site contains raw materials essential for construction projects in the Waikoloa and West Hawai'i area. The proposed amendment requests would also complement the following goals and policies of the Land Use and Economic elements of the General Plan:

Land Use - Industrial Element:

- Industrial activities may be located close to raw material or key resources. The ability of the subject property to provide the needed raw material vital to the construction industry while able to absorb the noxious nature of quarries speaks to the appropriateness of the area for such uses.

Economic:

- The County shall strive for diversification of its economy by strengthening industries and attracting new endeavors.

Additionally, the proposed requests are not contrary with the Zoning Code. The property is located within the County's A-5a zoning district and the State Land Use Agricultural district. The Zoning Code and State Law (HRS 205-6) allows quarry operations within the County and State Land Use Agricultural district if a Special Permit is approved for such use. Special Permit No. 833 has been approved for quarry operations and related uses.

Lastly, since the approval of the last time extension amendment in 1999, the South Kohala Community Development Plan (SKCDP) was adopted by Ordinance No. 08 159 on December 1, 2008. The SKCDP calls for the protection and preservation of Waikoloa's scenic views, landscapes and pu'u in the Waikoloa District. There are no pu'u within the project site and the quarry operations do not detract from Waikoloa's scenic views.

A favorable recommendation of these requests would not be contrary to the original reasons for the granting of the permit. Additionally, the amendment request to extend the life of the permit until December 31, 2043, and to add greenwaste composting activities and the recycling of Portland cement concrete and asphalt concrete pavement would not be contrary to the original reasons for granting the Special Permit.

Special Permit No. 833 was approved by the State Land Use Commission on January 19, 1993 to allow the establishment of a quarry operation and related uses. The permit was amended on February 26, 1999, which included an amendment to Condition No. 12 to extend the life of the permit until December 31, 2018. The requested quarry operations and related uses were reviewed for consistency of the criteria for approval of a Special Permit. The Planning Commission reviewed the request and the amendment and forwarded a favorable recommendation to the State Land Use Commission, who approved both the Special Permit and the subsequent amendment request.

In reviewing the proposed requests against the criteria for approval of a Special Permit, the requests are not contrary to the original reasons for the granting of the permit and meet the criteria for approval for an amendment to the Special Permit. In summary, the proposed requests are consistent with the following criteria:

The proposed amendments are an unusual and reasonable use of land situated within the Agricultural District. In recognizing that lands within Agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the Legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. Based on the very poor soil conditions of the project site for agricultural activities and the commitment of these lands for quarry uses over the past 20 years, the proposed time extension and additional recycling and composting operations are considered an unusual and reasonable use of agricultural land in this location within the State Land Use Agricultural District.

The proposed amendments will not be contrary to the objectives sought to be accomplished by the State Land Use Law and its regulations. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. Soils on the project site as Lava Flows, Aa (rLV). Soils are classified as "E" or "Very Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and are unclassified by the Department of Agriculture's ALISH Map. As the project site currently vacant of dwellings and are not in active agricultural use, the continued quarry use will not displace any existing agricultural activity or diminish the agricultural potential of the subject properties. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The proposed amendments to Special Permit No. 833 will not be contrary to the objectives sought to be accomplished by the State Land Use Law and its regulations. The granting of requests will continue to promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public

health and welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural uses. The State Land Use Commission, in its approval of Special Permit No. 833 in 1993 found that the quarrying activities were consistent with the objectives sought to be accomplished by the State Land Use Law. The continued operation until December 31, 2043 will not be contrary to the original reasons supporting the approval of the Special Permit by the State Land Use Commission. The applicant will continue to operate the quarry site in a manner and within the limitations as specified by the conditions of Special Permit No. 833.

The proposed amendments will not adversely affect the surrounding properties. The surrounding areas are vacant lands zoned Agricultural (A-5a). The area is remote and there is adequate open space buffer to minimize any physical, social or other impacts to nearby residential uses. The applicant has operated the quarry at the project site for over 20 years without complaints from the area residents. The applicant will continue to operate the quarry operations in a manner as represented to the Planning Commission and the State Land Use Commission.

The proposed amendments will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access will be from Waikoloa Road, which is a County maintained roadway that has 22 feet of pavement within an 80-foot wide right-of-way. The Department of Public Works commented that adding new uses and extending the life of the permit may at some time warrant improvements for the access intersection with Waikoloa Road. DPW is requesting the permit be conditioned that should any improvements to the access road with Waikoloa Road, such as but not limited to channelization, be required by DPW during the life of the permit, the applicant shall provide such improvements in a timely manner at no cost to the County of Hawai'i. This requirement appears to be covered under the existing Condition No. 5 but discussions with the DPW and the applicant, DPW is asking for the following language to replace and update Condition No. 5:

“At the written request of the Department of Public Works (DPW), access to Waikoloa Road shall comply with Chapter 22 of Hawaii County Code. Additionally, 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.”

Water to the project site is provided by a 4-inch waterline, which connects to a 16-inch waterline that runs along the south side of Waikoloa Road and is owned by West Hawai‘i Water Company. Wastewater demands are addressed through the use of chemical toilets. Lastly, all essential utilities, consisting of solar power and cell phone usage, and emergency services are available to the subject property. Based on the above information, it has been determined that the proposed amendments will not unreasonably burden public agencies to provide services.

Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The properties and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various “non-agricultural” services that may not be available or allowed by zoning for its residents, such as quarry operations.

The land upon which the proposed uses is sought is unsuited for the uses permitted within the district. Soils for the project site 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. Additionally, the U.S. Soil Survey identifies the soil type for the project as Lava Flows, Aa (rLV). Based on the

above information, it has been determined that the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The proposed uses will not substantially alter or change the essential character of the land and the present use. The character of the area is vacant, barren lava with quarry operations present in the immediate area. The requested use will not substantially change the essential character of the land, which is presently vacant of structures and will continue with the present use as a quarry operation, which have been approved for the property since 1993.

The proposed amendment requests are consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The project site is not proximate to the shoreline and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the project area. Professional flora and fauna surveys were conducted of the site and no endangered or threatened candidate species of flora or fauna are located within the project site. The area has not been identified as a significant botanical or biological habitat. Presently, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of known valued cultural, historical or native resources in the project area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

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

Investigation of valued resources: The following surveys were conducted for the Special Permit and for the proposed amendment requests:

1. Archeological Inventory Survey (AIS) was prepared by PHRI in 1991.
2. Archaeological Assessment Survey (AAS) was prepared by ASM Affiliates (Dr. Robert Rechtman, Ph.D., and Teresa Gotay) in 2015.
3. West Hawai'i Concrete Quarry Ka Pa'akai Discussion Report was prepared by Dr. Robert Rechtman, Ph.D. of ASM Affiliates in 2015
4. A Biological and Vertebrate Fauna Assessment was prepared by Ron Terry, Ph.D and Patrick J. Hart, Ph.D. of Geometrician Associates, LLC in 2015, which include a Blackburn's Sphinx Moth Survey.

The valuable cultural, historical, and natural resources found in the permit area:

The AIS identified 19 sites along the margin of a ridge in the northern portion of the 300-acre area. Five of the sites were assessed as significant for information content; none of these 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, which is a trail, was assessed as significant for informational purposes and cultural value. None of these 19 sites are located within the project area. All 19 sites were preserved "as is" with a 50-foot wide buffer around the collective sites. The boundary of the project area was located outside of the buffer area. Condition No. 6 of Special Permit No. 833 listed procedures for archaeological site mitigation, which has been complied with by the applicant.

Additionally, in June of 2015, an Archaeological Assessment Survey (AAS) of West Hawai'i Concrete's Waikoloa Quarry was conducted by ASM Affiliates (Dr. Robert Rechtman, Ph.D., and Teresa Gotay), which was submitted to the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD). DLNR-SHPD confirmed the recommendation in the AAS that no further archaeological work is necessary within the project area.

A report called West Hawai'i Concrete Waikoloa Quarry Ka Pa'akai Discussion was prepared by Dr. Robert Rechtman, Ph.D. of ASM Affiliates, which concluded that there are no specific valued natural or cultural resources within the project area and that

there is no evidence of any traditional or customary practices being exercised within the project area.

Lastly, a Biological Survey and Vertebrate Fauna Assessment was prepared for the project area in June of 2015, which confirmed there are no endangered, threatened or candidate plant or animal species within the project area.

Possible adverse effect or impairment of valued resources: There are no known valued cultural, historic or natural resources located within the project site. Additionally, the property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. Condition No. 7 requires the applicant to notify the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-SHPD.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

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

Based on the above considerations, a favorable recommendation of the time extension request and the request for the additional uses will continue to be consistent with the original findings by the Commissions as detailed in the Decision and Order of the State Land Use Commission date January 19, 1993. The proposed amendments should be granted subject to the following revised changes (Material to be deleted is bracketed and material to be added is underscored):

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval for the quarry operation shall be secured from the Planning Department on or before January 19, 1997. To assure adequate for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans for the quarry operation shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed quarry operations.
3. The quarry operations and related activities shall commence on or before December 10, 2003. A letter informing of commencement of operations shall be submitted to the Planning Department.
4. A metes and bounds description and map shall be submitted with plans for plan approval review. The area described shall contain less than 220 acres and the operation confined within the described area.
5. [~~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), access to Waikoloa Road shall comply with Chapter 22 of Hawai'i County Code. Additionally, 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.

6. The following procedures shall be instituted for archaeological site mitigation:
 - A. Possible burial sites identified in the Archaeological Inventory Survey (PHRI ms 1041-122091) shall be approved by the Hawaii Island Burial Council prior to receipt of Final Plan Approval.
 - B. The preservation area, including a 50-foot buffer zone, shall be staked/flagged prior to receipt of Final Plan Approval. A confirming letter from the archaeologist shall be submitted.
 - C. Construction workers and quarry operational personnel shall be informed of the significance of the staked preservation area. Construction plans shall also note the area.
 - D. An archaeologist shall be on site to monitor initial land preparation activities that occur in the vicinity of the preservation area.
7. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walls be uncovered during land preparation activities, work in the area shall immediately cease and the Planning Department notified. No work within the affected area shall resume until clearance from the Planning Department is received.
8. If required by the Department of Land and Natural Resources, a survey of the area identified as 'Suitable Habitat for the Ophioglossum Fern' in the 'Botanical Assessment' conducted by Winona Char (see Exhibit 1) shall be performed prior to any land alterations of the affected area. The survey and any mitigation measures shall be reviewed and approved by the Planning Department, in consultation with the Department of Land and Natural Resources.
9. The quarrying activity shall be limited to the hours of 6:30 a.m. to 5:30 p.m. daily; provided active noise generating activity (i.e., blasting, crushing) shall

commence no earlier than 7:30 a.m.

10. The applicant shall submit an Erosion Control and Site Restoration Plan for review and approval by the Planning Director, in consultation with the Department of Public Works, one year prior to the expiration date of the permit or prior to the termination of the operations, whichever occurs first.
11. Upon termination of the operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding area and rehabilitated as approved in the Erosion Control and Site Restoration Plan. The affected site shall be left in a non-hazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Department and the Department of Public Works for review and approval within ninety (90) days from the date of termination or abandonment.
12. The life of this permit shall be 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.
13. An adequate supply of water shall be made available for dust control and for fire prevention and pre-suppression.
14. Comply with all other laws, rules, regulations and requirements, including those of the Department of Health, Hawaii Electric Light Company, and the Department of Public Works.
15. An annual monitoring report shall be submitted to the Planning Director and Land Use Commission prior to the anniversary date of the approval of this permit. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems and their disposition. Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding properties. The report shall also include Applicant's progress in complying with the conditions imposed.
16. An extension of time for the performance of conditions within the permit, with the

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