



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

LAND USE COMMISSION  
STATE OF HAWAII  
2016 FEB 26 A 8:49

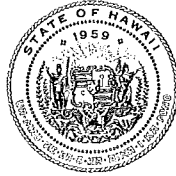
In the Matter of the Application of	)	Docket No. SP92-381
	)	
WAIKOLOA DEVELOPMENT	)	FINDINGS OF FACT, CONCLUSIONS
COMPANY	)	OF LAW, AND DECISION AND
	)	ORDER APPROVING THE
For the Establishment of a Quarry	)	RECOMMENDATION OF THE
Operation and Allied Uses on	)	COUNTY OF HAWAI'I LEEWARD
Within the State Land Use Agricultural	)	PLANNING COMMISSION TO
Approximately 220 Acres of Land Situated	)	AMEND THE STATE SPECIAL
District at Waikoloa, South Kohala, Hawai'i	)	USE PERMIT AND CERTIFICATE
Tax Map Key No.: 6-8-01: portion of 5	)	OF SERVICE
(nka approximately 219.990 acres at	)	
Waikoloa, South Kohala, Island of Hawai'i	)	
Tax Map Key No.: (3) 6-8-001: 066	)	
	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION  
AND ORDER APPROVING THE RECOMMENDATION OF THE  
COUNTY OF HAWAI'I LEEWARD PLANNING COMMISSION TO AMEND  
THE STATE SPECIAL USE PERMIT  
AND  
CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

February 26, 2016 by

Daniel E. Orodener, Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION  
AND ORDER APPROVING THE RECOMMENDATION OF THE  
COUNTY OF HAWAI'I LEEWARD PLANNING COMMISSION TO AMEND  
THE STATE SPECIAL USE PERMIT

The State of Hawai'i Land Use Commission ("LUC"), having examined the complete record of the County of Hawai'i Leeward Planning Commission ("Planning Commission") proceedings on amending the State Special Use Permit ("SUP") Application ("Application") filed by West Hawai'i Concrete ("Applicant"), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR"), and Rule 6 of Planning Commission Rules of Practice and Procedure to: (1) to amend existing Condition

No. 12 to extend the life of Special Permit (“SP 833”)<sup>1</sup> so that the quarrying and other activities can continue to 2043 or longer (i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063); (2) include greenwaste composting as an expressly permitted use under the Special Permit; and (3) allow for the processing and recycling of Portland cement concrete and asphalt concrete pavement on the Special Permit site (also referred to as “Project”) on approximately 219.990 acres of land situated at Waikoloa, South Kohala, County and Island of Hawai‘i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005), and upon consideration of the matters discussed therein, argument of counsel and public comments at its meeting on February 9, 2016, hereby makes the following findings of fact, conclusions of law, and decision and order:

### **FINDINGS OF FACT**

#### **PROCEDURAL MATTERS**

1. On September 15, 2015, WHC, LTD., a Hawai‘i corporation doing business as West Hawaii Concrete ("Applicant") filed a request with the Hawai‘i County Planning Department (the "Planning Department") to amend the special permit issued in the above-entitled docket pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, and Rule 6 to: (1) to amend existing Condition No. 12 to extend the life of Special Permit No. 833 (the "SP 833") so that the quarrying and other activities can continue to 2043 or longer (i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063); (2) include greenwaste compositing as an expressly permitted use under the Special Permit; and (3) allow for the processing and

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<sup>1</sup> SP 833 is a county designation for tracking the State Special Permit they review. Once it is forwarded with a recommendation to the State Land Use Commission it is given an official State Special Permit docket number; in this case SP92-381.

recycling of Portland cement concrete and asphalt concrete pavement on the Special Permit site on approximately 219.990 acres of land situate at Waikoloa, South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005) (the "Application").

2. Applicant has operated a quarry at the 219.990 acre site ("Petition Area") since 1995 under a license agreement with the landowner, which is now WQJ2008 Investment, LLC, a Washington limited liability company (as to an undivided 85.714% interest), and Ukumehame Quarry Company Limited Partnership, a Hawai'i limited partnership (as to an undivided 14.286% interest), as tenants in common ("Owner").
3. The County of Hawai'i Planning Commission authorized SP 833 at its hearing on September 22, 1992, and the State of Hawai'i Land Use Commission ("LUC") issued its Findings of Fact, Conclusions of Law, and Decision and Order in LUC Docket No. SP92-381 authorizing SP 833 on January 19, 1993 ("LUC D&O").
4. SP 833 allows the Petition Area to be used for blasting, drilling, rock crushing and screening, concrete ready-mix batching, pre-casting, asphaltic concrete products manufacturing equipment and materials storage and repair, and other necessary uses and activities related to providing a source of rock aggregate and concrete and asphalt products.
5. Included with the current Application were 24 exhibits, as follows: (1) Map & Metes and Bounds Submitted to Planning Department, dated 10/2/92 and Planning Department Acceptance, dated 10/22/92; (2) Subdivision Map, Sub No. 07-000696; (3) Fee Owner's Authorization; (3A) Licensee's Authorization; (4) Annual Monitoring Report; (5) 1996

Final Plan Approval; (6) Site Plan of Current Quarry Area and Proposed Quarry, Recycling, and Greenwaste Composting Area and Activities; (7) 2011 DOH Solid Waste Mgt Application and Permit; (8) State Land Use District Map; (9) County Zoning Map; (10) Flood Zone Map; (11) Dr. Robert Rechtman 1999 Letter re Monitoring; (12) 2015 Archaeological Assessment; (12A) SHPD Letter dated August 12, 2015; (13) Waikoloa Quarry Ka Pa'akai Discussion; (14) Land Study Bureau Map; (15) ALISH Map; (16) General Botanical Survey, July 2015; (17) Blackburn's Sphinx Moth Surveys; (18) Hydrologic Assessment; (19) Photos of Quarry; (20) LUPAG Map; (21) South Kohala Community Development Plan Map; and (22) Special Management Area Map.

6. By letter dated September 24, 2015, the Planning Department notified Applicant that it had accepted the Application for filing.
7. The Planning Department circulated the Application for agency comment.
8. By letter dated October 5, 2015, Applicant notified surrounding property owners and lessees of the filing of the Application, and provided information regarding how such owners and lessees could request a contested case proceeding in this matter.
9. By letter dated October 12, 2015, Applicant filed with the Planning Department an Affidavit of Sign Posting and Affidavit of Mailing, attesting to the posting of a sign at the Petition Area notifying the public of the pending application, and notifying the public of the mailing.

10. By letter dated November 24, 2015, the Planning Department notified Applicant that the matter was set for hearing before the Leeward Planning Commission on Thursday, December 17, 2015.
11. Applicant responded to all agency comment letters.
12. By notice dated December 1, 2015, Applicant notified surrounding property owners and lessees of the Planning Commission hearing. Included in that mailing was a copy of the Planning Commission's agenda, and a copy of the form "Petition for Standing in Contested Case Hearing."
13. No petitions for intervention or requests for contested case hearings were submitted in response to the Application.
14. On December 17, 2015, at the West Hawai'i Civic Center, after presentation by Planning Department staff, the Planning Commission considered the Application.
15. The Permit was first amended on February 26, 1999, which amendment included an amendment to Condition No. 12 to extend the life of the permit until December 31, 2018.
16. Applicant requested that Condition No. 12 be amended to allow operations at the quarry to continue until 2043 or longer, i.e., for as long as the Owner allows Applicant to continue quarry operations, which could extend to 2063.
17. The Planning Director's Recommendation is that Condition No. 12 be amended to read:

The life of this permit shall be for a period co-terminus with the existing license agreement with the owner of the property, or until December 31, [2018] 2043; the

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

18. The Planning Commission's approval of the Application recommended that the Permit be extended until 2043, at which time the Applicant will be required to submit another time extension request to continue operations.
19. The Planning Commission noted that the proposed request to allow the recycling of Portland cement concrete and asphalt concrete pavement, and greenwaste composting activities would be consistent and complementary with the "related uses" that are currently approved under Special Permit No. 833, which includes blasting, drilling, rock crushing and screening, concrete ready-mix batching, pre-casting, asphaltic concrete products manufacturing, equipment storage and materials storage and repair, and other necessary uses and activities related to providing a source of rock aggregate and concrete and asphaltic products.
20. The Planning Commission noted that the allowance of these additional uses will reduce the amount of materials being dumped into the local landfill and will allow those materials to be reused and recycled.
21. The Planning Department also noted Applicant has successfully operated a quarry at the Petition Area for twenty (20) years.
22. The Planning Commission further concluded that approving the proposed amendments to the Permit (a) would not be contrary (i) to the General Plan or the Zoning Code, (ii) the original reasons for granting the Permit, (iii) the objectives sought to be accomplished by

the State Land Use Law, Chapter 205, HRS, and its regulations, (b) are unusual and reasonable uses of land situated within the State Land Use Agricultural District, (c) will not adversely affect the surrounding properties nor unreasonably burden public agencies or infrastructure, (d) did not arise as a result of unusual conditions, trends, or needs since the district boundaries and regulations were established, (e) will not substantially alter or change the essential character of the land and the present use, (f) are consistent with Chapter 205A, HRS, and the Special Management Area guidelines contained in Rule No. 9 of the Planning Commission's Rules of Practice and Procedures, and (g) will not have a significant adverse impact to traditional and customary Hawaiian rights and practices.

23. The Planning Commission also recommended approval of the proposed amendments to the Permit on the ground that the land upon which the proposed uses are sought is unsuited for the uses permitted within the district. The soils for the petition area are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and are unclassified by the Department of Agriculture's ALISH Map.

24. The Planning Department ultimately recommended that the proposed amendments be granted subject to the following revised changes (Material to be deleted is bracketed and ~~stricken~~ and material to be added is underscored):

- a. The Applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
- b. Final Plan Approval for the quarry operation shall be secured from the Planning Department on or before January 19, 1997. To assure adequate plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans for the



quarry operation shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed quarry operations.

- c. The quarry operations and related activities shall commence on or before December 10, 2003. A letter informing of commencement of operations shall be submitted to the Planning Department.
- d. A metes and bounds description and map shall be submitted with plans for plan approval review. The area described shall contain less than 220 acres and the operation confined within the described area.
- e. ~~[Access onto the Waikoloa Road from the project site, including the provision of adequate sight distance, shall meet with the approval of the Department of Public Works prior to final plan approval. Should additional intersection improvements such as channelization be required by the Department of Public Works during the life of the permit, such improvements shall be provided in a timely manner by the applicant at no cost to the County of Hawaii.]~~ At the written request of the Department of Public Works (DPW), after the fifth anniversary of the issuance of the extended permit, the Applicant shall prepare a Traffic Impact Analysis Report (TIAR), at no cost to the County of Hawai'i, for submission to the DPW. The applicant shall coordinate with the DPW on implementing the Applicant's pro-rata share of appropriate traffic mitigation measures, if any, should it be determined through the TIAR that improvements to the Waikoloa/Quarry road intersection

are needed due to the Applicant's activity at the quarry. Access to Waikoloa Road shall comply with Chapter 22 of Hawai'i County Code.

- f. The following procedures shall be instituted for archaeological site mitigation:
  - i. 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.
  - ii. 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.
  - iii. Construction workers and quarry operational personnel shall be informed of the significance of the staked preservation area. Construction plans shall also note the area.
  - iv. An archaeologist shall be on site to monitor initial land preparation activities that occur in the vicinity of the preservation area.
- g. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walls be uncovered during land preparation activities, work in the area shall immediately cease and the Planning Department shall be notified. No work within the affected area shall resume until clearance from the Planning Department is received.

- h. If required by the Department of Land and Natural Resources, a survey of the area identified as 'Suitable Habitat for the Ophioglossum Fern' in the 'Botanical Assessment' conducted by Winona Char (see Exhibit 1) shall be performed prior to any land alterations of the affected area. The survey and any mitigation measures shall be reviewed and approved by the Planning Department, in consultation with the Department of Land and Natural Resources.
- i. The quarrying activity shall be limited to the hours of 6:30 a.m. to 5:30 p.m. daily; provided active noise generating activity (i.e., blasting, crushing) shall commence no earlier than 7:30 a.m.
- j. The applicant shall submit an Erosion Control and Site Restoration Plan for review and approval by the Planning Director, in consultation with the Department of Public Works, one year prior to the expiration date of the permit or prior to the termination of the operations, whichever occurs first.
- k. Upon termination of the operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding area and rehabilitated as approved in the Erosion Control and Site Restoration Plan. The affected site shall be left in a non-hazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Department and the Department of Public Works for review and approval within ninety (90) days from the date of termination or abandonment.
- l. The life of this permit shall be for a period co-terminus with the existing license agreement with the owner of the property, or until December 31, [2018] 2043; the

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

- m. An adequate supply of water shall be made available for dust control and for fire prevention and pre-suppression.
- n. Comply with all other laws, rules, regulations and requirements, including those of the Department of Health, Hawaii Electric Light Company, and the Department of Public Works.
- o. An annual monitoring report shall be submitted to the Planning Director and Land Use Commission prior to the anniversary date of the approval of this permit. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems and their disposition. Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding properties. The report shall also include Applicant's progress in complying with the conditions imposed.
- p. An extension of time for the performance of conditions within the permit, with the exception of Condition No. 12, may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original

reasons for the granting of the permit, and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

25. No public testimony was received by the Planning Commission. After due deliberation, at its meeting on December 17, 2015, the Planning Commission recommended approval of the Application to the LUC by a vote of 5 in favor and 2 excused.
26. On January 11, 2016, the LUC received a copy of the Planning Commission's decision and the record of the Planning Commission's proceedings on the Application.
27. On January 26, 2016, Applicant submitted to the LUC the \$1,000.00 filing fee by check payable to the State of Hawai'i.
28. On February 1, 2016, the LUC mailed a notice and meeting agenda to all parties and the Statewide, O'ahu and Hawai'i mailing lists.
29. On February 8, 2016, Applicant filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order ("Proposed Order").
30. On February 9, 2016, the LUC met in Kona, island of Hawai'i, to consider the Petition. Jennifer A. Lim, Esq. and Jason Macey appeared on behalf of the Applicant; Daryn Arai and Danny B. Patel, Esq., Deputy Corporation Counsel, appeared on behalf of the County; and, Deputy Attorney General Bryan Yee, Esq., appeared on behalf of OP. The

Commission heard public testimony from Mr. Yee on behalf of OP. At the meeting the Applicant provided a description of the Project relative to Section 15-15-95(c), HAR. Following the presentation by the Applicant, the LUC raised questions about the operation of the Project and its impacts. The County provided a brief overview of its decision recommending approval of the Application and the conditions it imposed.

31. Thereafter, a motion was made and seconded to approve the Application and the County's recommendation, and as agreed to by the Applicant.

32. On February 17, 2016, the LUC mailed out the agenda and notice of hearing for the February 24, 2016, LUC meeting to all parties, and the Statewide, Hawai'i and Maui mailing lists.

33. On February 24, 2016, the LUC conducted a meeting to adopt the form of the Order on this docket at the Maui Arts and Cultural Center in Kahului, Maui. Entering appearances were Mel Macey for the Applicant; and Deputy Attorney General Bryan Yee, Esq., for OP. The County of Hawai'i indicated that it would not be in attendance. The Commission provided an opportunity for public testimony. There was no public testimony.

### **RULINGS ON PROPOSED FINDINGS OF FACT**

Any conclusions of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; and finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

### CONCLUSIONS OF LAW

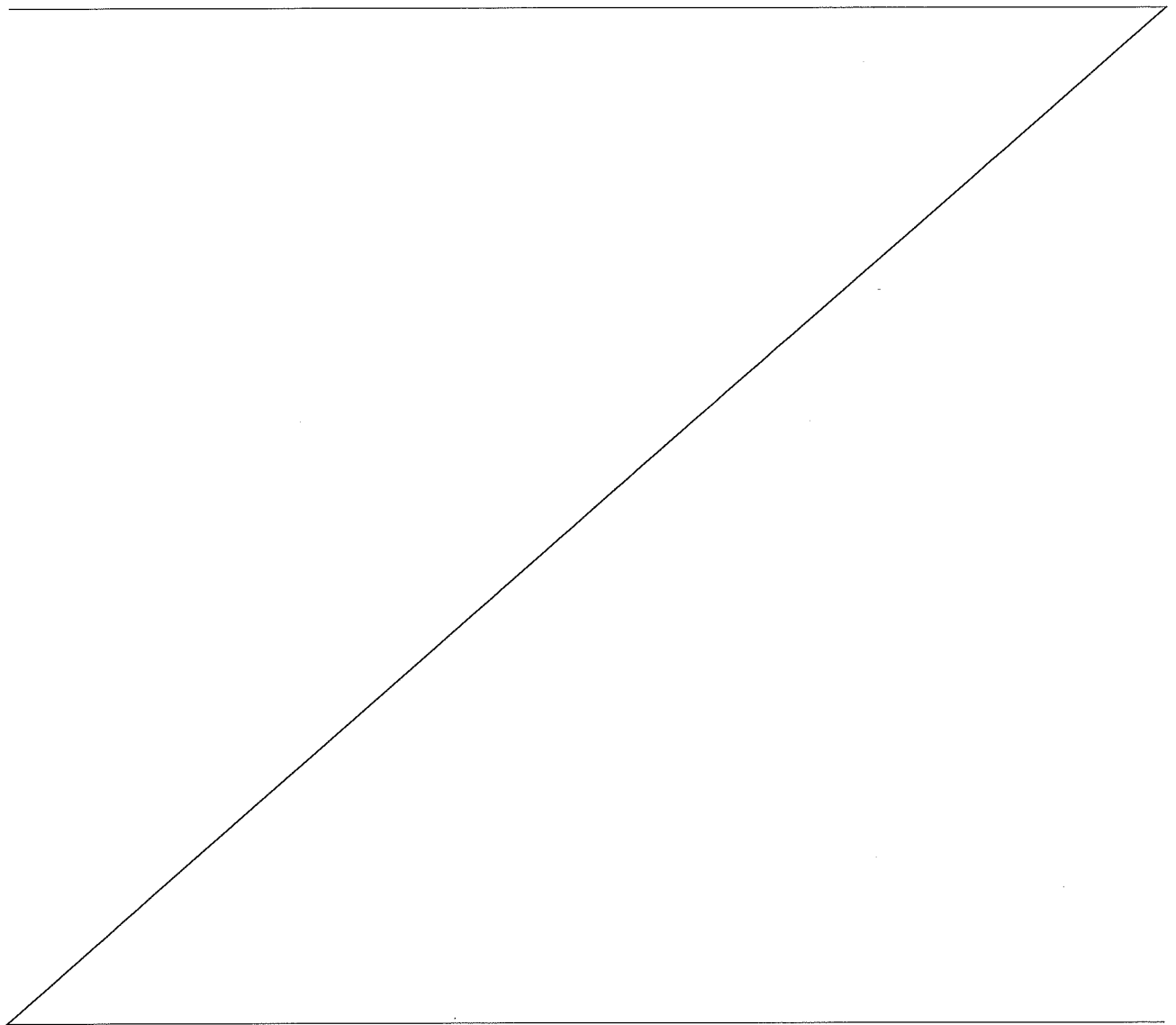
1. The LUC has jurisdiction over this matter pursuant to section 205-6, HRS, and section 5-15-95 *et seq.* HAR.
2. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS and section 15-15-95 *et seq.*, HAR, the LUC finds that the recommendation of the Planning Commission to approve a State Special Permit for the Petition Area, consisting of approximately 219.990 acres of land situated at Waikoloa, South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005), generally meets the guidelines for determining an "unusual and reasonable use" and "would promote the effectiveness and objectives" of chapter 205, HRS, within the State Land Use Agricultural District.
3. The Project constitutes an unusual and reasonable use within the agricultural district other than those for which the district is classified, and complies with section 205-6(a), HRS.
4. The Project constitutes an exceptional situation where the proposed use would not change the essential character of the district nor be inconsistent therewith.
5. The Project constitutes a use that would promote the effectiveness and objectives of chapter 205, HRS, and complies with section 205-6(c), HRS.
6. The Petition Area is not designated as Important Agricultural Land under Part III of chapter 205, HRS, and therefore the Project does not conflict with any part of chapter 205, HRS, and complies with section 205-6(c), HRS.

7. Article XI, section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
8. The LUC has considered Article XI, section 1, of the Hawai'i State Constitution and finds that the Project is in compliance and non-violative therewith.
9. 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.
10. The LUC has considered Article XI, Section 3, of the Hawai'i State Constitution and finds that the Project is in compliance and non-violative therewith.
11. Article XII, Section 7, of the Hawai'i State Constitution requires the LUC to protect Native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.
12. The LUC has considered Article XII, Section 7, of the Hawai'i State Constitution and finds that the Project is in compliance and non-violative therewith.
13. 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 Hawai'i 425, 903, P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996). The LUC has



considered such responsibilities and obligations and finds the Project to be consistent and non-violative therewith.

14. The LUC is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa'akai O Ka'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000). The LUC has considered such responsibilities and obligations and finds the Project to be consistent and non-violative therewith.



## **DECISION AND ORDER**

Having duly considered the complete record in this matter and the oral arguments presented by the Applicant in this proceeding, together with public testimony from the Planning Department and OP, and a motion having been duly made and seconded at a meeting conducted on February 9, 2016, in Kona, Hawai'i, to approve the recommendation of the Planning Commission, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, the LUC hereby APPROVES the recommendation of the Planning Commission approving amendments to the State Special Permit for the Project site as proposed by the Planning Commission, and as agreed to by the Applicant, consisting of approximately 219.990 acres of land situated at Waikoloa, South Kohala, County and Island of Hawai'i, Tax Map Key No. (3) 6-8-001: 066 (formerly TMK No. (3) 6-8-001: 005), subject to the following conditions:

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 time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans for the quarry operation shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed quarry operations.

3. The quarry operations and related activities shall commence 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. At the written request of the Department of Public Works ("DPW"), after the fifth anniversary of the issuance of the extended permit, the applicant shall prepare a Traffic Impact Analysis Report ("TIAR"), at no cost to the County of Hawai'i, for submission to the DPW. The applicant shall coordinate with the DPW on implementing the applicant's pro-rata share of appropriate traffic mitigation measures, if any, should it be determined through the TIAR that improvements to the Waikoloa/Quarry road intersection are needed due to the applicant's activity at the quarry. Access to Waikoloa Road shall comply with Chapter 22 of Hawai'i County Code.
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 Hawai'i 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.

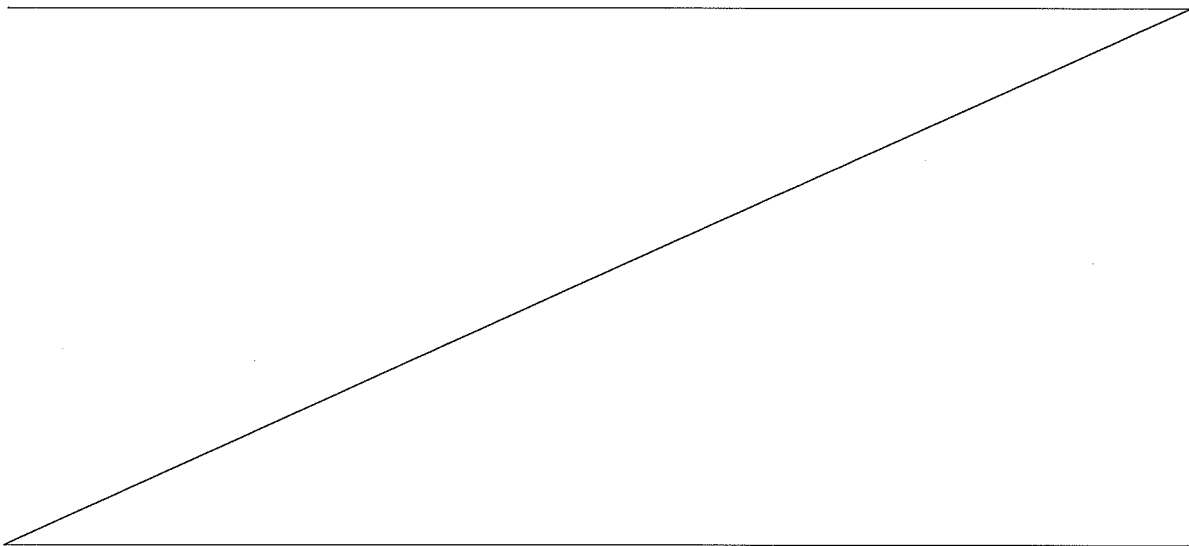
- c. Construction workers and quarry operational personnel shall be informed of the significance of the staked preservation area. Construction plans shall also note the area.
  - d. An archaeologist shall be on site to monitor initial land preparation activities that occur in the vicinity of the preservation 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 DPW, 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 DPW 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-terminus with the existing license agreement with the owner of the property, or until December 31, 2043; the date of completion of the proposed quarrying; or its abandonment, whichever comes first.
13. An adequate supply of water shall be made available for dust control and for fire prevention and pre-suppression.
14. Applicant shall comply with all other laws, rules, regulations and requirements, including those of the Department of Health, Hawai'i Electric Light Company, and the DPW.
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.



ADOPTION OF ORDER


This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 26th, day of February, 2016, per motion on February 9, 2016 in Kona, Hawai'i.

LAND USE COMMISSION

STATE OF HAWAI'I

APPROVED AS TO FORM

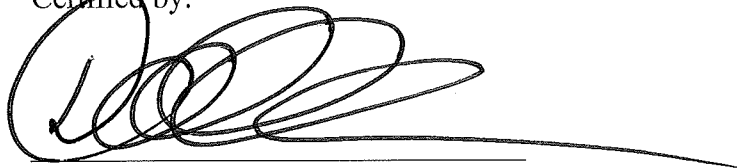
  
Deputy Attorney General

By   
EDMUND ACZON  
Chairperson and Commissioner

Filed and effective on:

2/26/16

Certified by:

  
DANIEL E. ORODENKER  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Application of	)	Docket No. SP92-381
	)	
WAIKOLOA DEVELOPMENT	)	FINDINGS OF FACT, CONCLUSIONS
COMPANY	)	OF LAW, AND DECISION AND
	)	ORDER APPROVING THE
For the Establishment of a Quarry	)	RECOMMENDATION OF THE
Operation and Allied Uses on	)	COUNTY OF HAWAI'I LEEWARD
Within the State Land Use Agricultural	)	PLANNING COMMISSION TO
Approximately 220 Acres of Land Situated	)	AMEND THE STATE SPECIAL
District at Waikoloa, South Kohala, Hawai'i	)	USE PERMIT
Tax Map Key No.: 6-8-01: portion of 5	)	AND
(nka approximately 219.990 acres at	)	CERTIFICATE OF SERVICE
Waikoloa, South Kohala, Island of Hawai'i	)	
Tax Map Key No.: (3) 6-8-001: 066	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following  
by depositing the same in the **AS INDICATED BELOW** on February 26th, 2016:

LEO R. ASUNCION, JR., AICP, Acting Director **(HAND DELIVERY)**  
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**(REGULAR MAIL)**

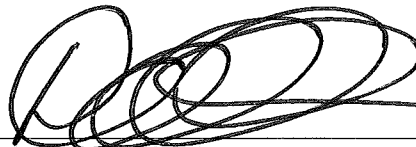
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**(CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED)**

DATED: Honolulu, Hawai'i \_\_\_\_\_ February 26, 2016.



\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer