

Sakai, Kimberly

From: Daryn Arai <Daryn.Arai@outlook.com>
Sent: Monday, June 27, 2022 10:40 AM
To: Planning Internet Mail
Cc: Kay, Christian; Maile Luuwai; Choy, Andrew H; Shellby Yamada
Subject: WPC July 7, 2022 Agenda Item #4 - Yamada and Sons, Inc. Statement regarding discussions with KPFA and DHHL re: PL-SPP-2022-012
Attachments: PL-SPP-2022-000012 Yamada Statement regarding KPFA coordination 06.22.22 (FINAL).pdf

Aloha Chairperson Lin,

Yamada and Sons, Inc, the Applicant for the above-described matter, offers the following statement for consideration by the Windward Planning Commission at its upcoming July 7, 2022 meeting regarding this particular agenda item.

KPFA President Maile Lu'uwai and DHHL Planning Program Manager Andrew Choy are copied on this email.

Please do not hesitate to contact me should there be any questions.

Daryn

Daryn Arai
Land Use Planning Consultant
Mobile: (808) 895-3218

June 27 2022

Mr. Dennis Lin, Chairperson
and Members of the Windward Planning Commission
County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, HI 96720

Dear Chairperson Lin:

Subject: Applicant's Statement regarding discussions with the
Keaukaha-Pana'ewa Farmers Association and the
Department of Hawaiian Home Lands regarding
Special Permit Application PL-SPP-2022-000012
Applicant: Yamada and Sons, Inc.
Request Proposed quarry and related activities on 37.882 acres
TMK: 2-1-013: 002 (portion); Waiākea, South Hilo

On behalf of Yamada and Sons, Inc., we would like to express our appreciation to the Windward Planning Commission for its support of the Applicant's request to defer its June 2, 2022 hearing on this matter to allow for the opportunity to further dialogue with the Keaukaha-Pana'ewa Farmers Association (KPFA) and the Department of Hawaiian Home Lands (DHHL) to address their concerns. Our heartfelt appreciation also extends to KPFA President Maile Lu'uwai, her board members, the KPFA community and DHHL for their sincere efforts to find opportunities where we can all find common understanding and can all flourish. Finally, we thank Planning Director Zendo Kern for his favorable recommendation of the Special Permit request and to his staff for their very hard work in processing this application.

Prior to your June 2, 2022 meeting and since then, the Applicant has communicated with the KPFA and DHHL representatives on the following occasions:

- April 12, 2022 – Zoom meeting with KPFA & DHHL representatives
- April 13, 2022 to present – series of emails and phone discussions with KPFA President Maile Lu'uwai and member Nako'olani Warrington.
- April 17, 2022 – On-site inspection of project site by KPFA members
- May 16, 2022 – Second on-site inspection by KPFA members
- June 4, 2022 – Zoom meeting with KPFA President Maile Lu'uwai
- June 16, 2022 – Zoom meeting with KPFA President Maile Lu'uwai
- June 18, 2022 – In-person meeting KPFA board members and other invitees

Notice of the filing of the Special Permit application with the County was served upon landowners within 1,000 feet of the project site on March 21, 2022. Notice of the scheduled and deferred June 2, 2022 Windward Planning Commission meeting on this matter was similarly served on May 16, 2022. A notice of the July 7, 2022 Windward Planning Commission meeting on this matter was served on June 21, 2022 as required by your rules of practices and procedures.

These discussions between the Applicant, KPFA and DHHL have found common areas of concerns regarding the potential significant adverse impacts of the proposed quarry project upon the nearby Hawaiian Home Commission Act beneficiaries and have highlighted the need to ensure that proper mitigating actions are implemented to mitigate these impacts upon KPFA members and their community. These concerns and recommended conditions from KPFA and DHHL are listed below in bold along with the Applicant's response and revisions to the Planning Director's proposed conditions of approval included within the attached Exhibit A.

1. **The Applicant shall develop an Exit (closure) Plan in consultation with KPFA and the DHHL. The Exit Plan shall include mitigation efforts to leave 'āina in non-hazardous condition to ensure that the state property is not degraded.**

The Exit Plan shall include consideration for Hawaiian Home Commission Act (HHCA) beneficiaries, who reside or will reside in the KPFA community on HHCA lands in Pana'ewa. The site must not negatively impact HHCA lands or current/future beneficiaries. The Exit Plan shall include mitigation efforts to leave 'āina in nonhazardous condition.

Applicant's Response: The Applicant has no objections to developing an exit plan in coordination with the KPFA and DHHL, although developing such an exit plan may take much longer than 4 months since such a plan must also be coordinated with the State of Hawai'i. Applicant recommends that efforts to develop an exit plan commence within 4 months after issuance of the Special Permit, as offered by a new Condition No. 18.

18. Within four months from the effective date of this permit, the Applicant shall commence development of a permit site closure plan meeting with the approval of the State Department of Land and Natural Resources, in consultation with Keaukaha Pana'ewa Farmers Association (KPFA) and the Department of Hawaiian Home Lands (DHHL). The closure plan shall include mitigation efforts to leave the permit site in a non-hazardous condition. The closure plan shall include consideration for Hawaiian Home Commission Act (HHCA) beneficiaries, who reside or will reside in the KPFA community on HHCA lands in Pana'ewa. The method of permit site closure must not negatively impact HHCA lands or current/future beneficiaries.

Also note that Condition 23 of the Land License also requires a “closure plan”, which is recited below:

“23. Closure plans for the License Area shall require that the remaining quarry face will be stepped back, with a maximum twenty (20) foot rise at 1/4: 1 slope and a minimum ten (10) foot wide benches between each rise. This bench is provided to break up the vertical drop of the pit wall, provide safe access for quarry activities, and to control rockfall. All sides of the quarry shall be required to be left as a clean stabilized slope face without any protruding or perched rocks that may contribute to a rock fall problem.”

2. **Applicant shall confine all activity and access to the licensed area within normal quarry operation hours, Monday thru Friday, 7:00am to 3:30 pm only. No activities shall be permitted during weekend hours.**

Applicant’s Response: The Applicant has no objection to restricting the days and hours when noise generating activity will occur within the licensed area. However, the Applicant would like to retain the ability to access the licensed area to conduct low-noise activities during the licensed hours of 6:00am to 6:00pm, daily such as planning, surveying, staking, mobilization of equipment between permit area and Applicant’s processing facilities, etc., as specified in the revised Condition No. 4.

4. [Quarrying]Active quarrying activities, described as the extraction and handling of rock or soil material, including its transport, shall be restricted to that period from Monday through Friday, between the hours of 7:00 a.m. to 3:30 p.m.. All non-active, low-noise generating quarry-related activities, such as site planning, surveying, staking, mobilization of equipment between permit area and Applicant’s processing facilities, etc. shall be limited to the hours of 6:00 a.m. to 6:00 p.m. daily.

3. **Clarification language is required for “Transport Between Quarry and Baseyard” so that it is aligned/consistent with the permit application. This condition requires specific and unambiguous language regrading rock hauling. This condition shall include no transport on Railroad Avenue that borders and/or is adjacent to HCCA communities.**

Applicant’s Response: The Applicant has no objection to restricting the transport of quarried material to Ho’olaulima Road, as specified in the revised Condition No. 5 below, that also addresses the Director’s recommendation regarding the use of

highway-legal vehicles in the transport of material, as detailed in Applicant's June 1, 2022 testimony to the Windward Planning Commission.

5. Prior to commencement of quarrying activities, the Applicant shall notify the Department of Environmental Management of the starting date of quarrying operations. ~~[Upon commencement of quarrying operations within the permit area, t]~~The Applicant shall only use highway legal vehicles to haul material from the quarry site to the Applicant's processing site upon the acceptance of the dedication of Ho'olaulima Road by the County of Hawai'i or as may be directed by the Department of Environmental Management. As represented by the Applicant, Ho'olaulima Road shall be the sole means of transport of quarried material between the permit site and the Applicant's processing facilities. The Applicant shall not use Railroad Avenue from Puainako Street to Mamaki Road to transport quarried material.

4. **Within two months of permit approval, the Applicant shall prepare a water source plan for dust suppression and the plan shall be shared with KPFA and DHHL.**

Applicant's Response: This requested condition is not necessary as a proposed on-site water source will not be developed within the project site, as per the Applicant's representations within the Final Environmental Assessment as well as the Special Permit application. Water for dust suppression is obtained from the Applicant's existing facilities outside of the proposed quarry site and utilized on an as needed basis, depending on weather conditions. This practice is the same as the Applicant's existing adjoining quarry that has been in operation for the past 12 years.

5. **The Application states that the County of Hawai'i General Plan classifies the project site as "Important Agricultural Lands." The permit shall state that the project site is on "Important Agricultural Lands." In addition, the permit must include legend/key for Figures 4, 5, and 6; State Land Use, Zoning and LUPAG.**

Applicant's Response: This requested condition is not necessary as proper reference to the General Plan designation for the project site as "Important Agricultural Lands" is made on numerous occasions within the following documents that are made a part of the official County record on proceedings regarding this Special Permit application:

- Final Environmental Assessment Yamada and Sons Rock Quarry dated February 2020 in Section 3.6.2-Hawaii County Zoning and General Plan on Page 44.
- Special Permit Application for Yamada and Sons, Inc. dated February 2022 in Section C(4) on Page 5 with LUPAG Map on Page 6.
- Planning Director's Background Report dated May 23, 2022 at Item No. 12 on Page 3.
- Planning Director's Recommendation Report dated May 23, 2022 at discussion Item G on Page 7.

Furthermore, State Land Use and Zoning designations as it affects the project site is similarly referenced within the following documents that are made a part of the official County record on proceedings regarding this Special Permit application:

- Final Environmental Assessment Yamada and Sons Rock Quarry dated February 2020 in Section 3.6.2-Hawaii County Zoning and General Plan on Page 44.
- Special Permit Application for Yamada and Sons, Inc. dated February 2022 in Section C(2) for State Land Use on Page 4 and C(3) for Zoning on Page 5. Maps of the State Land Use designation pattern for the area is shown in Figure 4 on Page 5 with Zoning shown on Figure 5 on Page 6.
- Planning Director's Background Report dated May 23, 2022 at Item Nos. 11 and 13 on Page 3.
- Planning Director's Recommendation Report dated May 23, 2022 within Paragraph 2 on Page 3 (State Land Use).

6. **The permit shall describe the adjacent affected HCCA (*sic*) community of Pana'ewa with data and a map identifying number of residences and population of Ag and residential lots and include detail regarding distance between the project site and adjacent DHHL lands.**

Applicant's Response: This requested condition is not necessary as the DHHL is the proper agency to provide this information as part of its testimony regarding this Special Permit application, which will then be incorporated as part of the official record.

7. **The permit shall include an acknowledgment that environmental injustices due to industrial and commercial development has impacted the surrounding HHCA communities adjacent and near the project area.**

Applicant's Response: This statement is not appropriate as a condition of approval, which are typically performance-based requirements. The Applicant must defer any decision regarding this matter to the County and ultimately, the State Land Use Commission. Both the KPFA and the DHHL can elect to make this statement as part of their testimony regarding this application, which will then be included within the official record regarding these proceedings. However, the Applicant's position is that the proposed quarry within the 37.882-acre project site, along with its adherence to all representations made in these proceedings regarding the method of its operations and with the proper implementation of all required mitigation measures developed in collaboration with the KPFA and DHHL, does not alone represent an environmental injustice upon the surrounding HHCA communities.

8. **The permit shall include dates of public participation and which adjacent property owners were sent permit application notices.**

Applicant's Response: In lieu of a condition, the official County record contains evidence that service of the filing of the application and the date of its deferred hearing before the Windward Planning Commission was made by the Applicant to surrounding property owners within 1,000 feet of the affected property as well as posting of a public notice sign fronting the project site. For the record, the Applicant has communicated with the KPFA and DHHL on the following dates:

- April 12, 2022 – Zoom meeting with representatives of the KPFA & DHHL
- April 17, 2022 – On-site inspection of project site by KPFA members
- April 13, 2022 to present – a series of emails and phone discussions with KPFA President and member Nako'olani Warrington.
- May 16, 2022 – Second on-site inspection by KPFA members
- June 4, 2022 – Zoom meeting with KPFA President Maile Lu'uwai
- June 16, 2022 – Zoom meeting with KPFA President Maile Lu'uwai
- June 18, 2022 – In-person meeting with KPFA board members and invitees

As previously mentioned, notice of the filing of the Special Permit application with the County was served upon landowners within 1,000 feet of the project site on March 21, 2022. Notice of the deferred June 2, 2022 Windward Planning Commission meeting on this matter was similarly served on May 16, 2022. A notice of the July 7, 2022 Windward Planning Commission meeting on this matter was served on June 21, 2022

9. **The permit shall include the date of the most recent General Plan and the date and name of the official Community Development Plan referenced in the Special Permit Use. The permit shall clearly indicate which Community Development Plan is being referenced, and if in fact, the referenced CDP has been adopted into the County Code.**

Applicant's Response: This requested condition is not necessary as it is a finding more than it is a condition. For the record, the General Plan referenced within the FEA, Special Permit application, and Planning Director's Background and Recommendations reports is dated "February 2005" and adopted pursuant to Ordinance No. 05-025 with an effective date of February 9, 2005, as amended.

The Hilo Community Development Plan, which is referenced in the Planning Director's Background Report dated May 23, 2022 at Item No. 14 on Page 3, was adopted on May 21, 1975.

10. **Prior to start of quarry operation, the applicant shall obtain all applicable state Department of Health (DOH) Clean Air Branch Permits for the proposed use.**

Applicant's Response: This requested condition is already addressed by current Planning Director-recommended Condition No. 7 which states:

7. An Air Pollution Control Permit, if required, shall be secured from the State Department of Health before the commencement of quarry activities. Adequate dust control mitigation measures shall be implemented for the duration of the quarry operation in accordance with Department of Health requirements. An adequate supply of water shall be made available for dust control.

- 11. Prior to start of quarry operation, the applicant shall develop an air quality monitoring plan in collaboration with KPFA and DHHL and the air quality monitoring plan shall be approved by the state DOH Clean Air Branch.**

Applicant's Response: The Applicant has no objection to working with both the KPFA and DHHL regarding the development of an air quality monitoring plan if required by the DOH Clean Air Branch, as long as such a plan conforms to applicable DOH standards and is specific to conditions within the project site and the Applicant's proposed quarry operations. Therefore, we offer the following new Condition 8.

8. As may be required by and subject to the approval of the State Department of Health-Clean Air Branch, the Applicant, in collaboration with the KPFA and the DHHL, shall develop an air quality monitoring plan specific to monitoring of air quality conditions within the permit area prior to the commencement of active quarry activities.

- 12. During quarry operation, the applicant shall implement best management practices including but not limited to: regular watering of area being mined and stockpile areas. As needed, such as during periods of frequent rainfall, etc.**

Applicant's Response: The Applicant has no objection to this condition as it represents the Applicant's best management practices currently applied to its existing quarry operations that will be extended into the new quarry site. Therefore, we offer the following new Condition No. 9:

9. The Applicant shall implement best management practices to minimize dust generated by active quarry activities within the permit area, including but not limited to, the regular watering of area being mined and stockpile areas on an as needed basis, depending on weather conditions. These best management practices were disclosed within the Special Permit Application dated November 23, 2022, any supplemental material, and the representations made before the Windward Planning Commission.

Note that Director's Condition No. 2 requires the Applicant to adhere to all representations made before the Windward Planning Commission and within its application, which speaks to implementing best management practices such as:

- Maintain a buffer of existing vegetation around the perimeter of the quarry site that will help to mitigate both noise and fugitive dust;
- Phasing of the project to disturb the minimum area of soil at a particular time;

Mr. Dennis Lin, Chairperson
and Members of the Windward Planning Commission
Page 9 of 9
June 27, 2022

- Establish slope protection as soon as possible to promote natural vegetation growth and increase perimeter vegetation buffer;
- Maintain on-site travel routes to minimize dust and runoff;
- On-site dust will be monitored by Yamada and Sons, Inc. supervisory personnel and dust suppression measures will be implemented as needed;
- A stabilized construction entrance/exit will be installed and maintained to help eliminate vehicle tracking from the license area onto Ho‘olaulima Road;
- All quarry-related traffic between the license area and processing facility will be limited to one haul route via Ho‘olaulima Road;
- The haul route will also be monitored by Yamada and Sons, Inc. supervisory personnel. If their haul vehicles track shoulder material onto Ho‘olaulima Road, they can deploy our water truck(s) and/or pavement sweeper(s) equipped with dust suppression systems to clean off the haul route as needed; and
- No rock crushing will be conducted within the quarry site.

Thank you for the opportunity to provide an update on the collective efforts of the Applicant, KPFA and DHHL to ensure that approval of this Special Permit request is found to be an unusual and reasonable use of agricultural land that will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. We collectively hope for a favorable recommendation of this request from the Windward Planning Commission, and we thank you in advance for your thoughtful consideration.

Sincerely,



DARYN ARAI
Land Use Planning Consultant

copy via email: Shellbylynn Yamada, President, Yamada and Sons, Inc.
Maile Lu‘uwai, President, Keaukaha Pana‘ewa Farmers Association
Andrew Choy, Planning Program Manager, Department of Hawaiian Home Lands

APPLICANT, KPFA and DHHL PROPOSED REVISIONS TO
PLANNING DIRECTOR'S RECOMMENDED CONDITIONS OF APPROVAL
REGARDING SPECIAL PERMIT APPLICATION PL-SPP-2022-000012
APPLICANT: YAMADA AND SONS, INC.

(Deleted material is bracketed and struck-out, added material is underscored)

1. The applicant, its successors or assigns (Applicant) shall comply with all of the stated conditions of approval.
2. The proposed quarry operation shall be developed and conducted in a manner that is substantially representative of Land license No. S-359 and plans and details contained within the Special Permit Application dated November 23, 2022, any supplemental material, and the representations made before the Windward Planning Commission. Any expansion of uses beyond what is represented in this document shall require an amendment to this permit.
3. The life of this permit shall be co-terminus with the expiration date of Land License No. S-359 issued to Yamada & Sons, Inc. for quarrying activities within the Special Permit area.
4. [Quarrying]Active quarrying activities, described as the extraction and handling of rock or soil material, including its transport, shall be restricted to that period from Monday through Friday, between the hours of 7:00 a.m. to 3:30 p.m.. All non-active, low-noise generating quarry-related activities, such as site planning, surveying, staking, mobilization of equipment between permit area and Applicant's processing facilities, etc. shall be limited to the hours of 6:00 a.m. to 6:00 p.m. daily.
5. Prior to commencement of quarrying activities, the Applicant shall notify the Department of Environmental Management of the starting date of quarrying operations. ~~[Upon commencement of quarrying operations within the permit area, t]~~The Applicant shall only use highway legal vehicles to haul material from the quarry site to the Applicant's processing site upon the acceptance of the dedication of Ho'olaulima Road by the County of Hawai'i or as may be directed by the Department of Environmental Management. As represented by the Applicant, Ho'olaulima Road shall be the sole means of transport of quarried material between the permit site and the Applicant's processing facilities. The Applicant shall not use Railroad Avenue from Puainako Street to Mamaki Road to transport quarried material.
6. The method of sewage disposal shall meet with the requirements of the Department of Health.

EXHIBIT A

7. An Air Pollution Control Permit, if required, shall be secured from the State Department of Health before the commencement of quarry activities. Adequate dust control mitigation measures shall be implemented for the duration of the quarry operation in accordance with Department of Health requirements. An adequate supply of water shall be made available for dust control.
8. As may be required by and subject to the approval of the State Department of Health-Clean Air Branch, the Applicant, in collaboration with the KPFA and the DHHL, shall develop an air quality monitoring plan specific to monitoring of air quality conditions within the permit area prior to the commencement of active quarry activities.
9. The Applicant shall implement best management practices to minimize dust generated by active quarry activities within the permit area, including but not limited to, the regular watering of area being mined and stockpile areas on an as needed basis, depending on weather conditions. These best management practices were disclosed within the Special Permit Application dated November 23, 2022, any supplemental material, and the representations made before the Windward Planning Commission.
- 10[8]. A National Pollutant Discharge Elimination System (NPDES) permit and an Underground Injection Control (UIC) permit, if required, shall be secured from the State Department of Health before the commencement of quarry activities.
- 11[9]. To protect any Hawaiian hoary bats in the vicinity of the property, woody vegetation over 15 feet in height shall not be removed during bat breeding season of June 1st to September 15th.
- 12[40]. To protect any Hawaiian hawk in the vicinity of the property, vegetation clearing shall not occur within the permit area during hawk breeding season of March to September without first conducting surveys for hawk and goose nests and coordinating with US Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified ornithologist. Additionally, no clearing or quarry activities shall occur within 1,600 feet of any active Hawaiian hawk nest during the breeding season until the young have fledged.
- 13[44]. To protect any Hawaiian goose in the vicinity of the property, all quarry activities within 100 feet shall cease, and the bird should not be approached. Work may continue after the bird leaves the areas. If a nest is discovered at any point, the Applicant shall contact the Hawaii Island Branch DOFAW Office at (808) 974-4221.
- 14[42]. To protect any seabirds (Hawaiian petrels and Newell's shearwaters) in the vicinity of the property, the Applicant shall install shielded outdoor lights to direct light downwards.

- ~~15[43]~~. To protect 'ōhi'a trees from Rapid 'Ōhi'a Death (ROD) on the subject property, the Applicant shall comply with the following protocols: 1) Prior to clearing the edges of the quarry, any isolated 'ōhi'a trees on the boundary will be identified. Any such trees that are not planned for removal on the edges of the quarry will be protected from disturbance entirely or cut and chipped or buried to ensure that they do not present a ready target for ROD infection that could spread to other trees; 2) treat any unavoidable scars on 'ōhi'a trees that result from clearing to prevent infestation of the fungus; 3) stack all removed 'ōhi'a trees and dispose of by burying or chipping; do not remove from project site; and 4) decontaminate boots and work tools before and after working in an area with 'ōhi'a trees.
- ~~16[44]~~. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the land clearing or quarry operations, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- ~~17[45]~~. Within ninety (90) days after termination of the quarry operation or abandonment of the project site, the Applicant shall submit to the Planning Department appropriate documentation which demonstrates compliance with the DLNR approved closure/site reclamation plan.
- ~~18.~~ Within four months from the effective date of this permit, the Applicant shall commence development of a permit site closure plan meeting with the approval of the State Department of Land and Natural Resources, in consultation with Keaukaha Pana'ewa Farmers Association (KPFA) and the Department of Hawaiian Home Lands (DHHL). The closure plan shall include mitigation efforts to leave the permit site in a non-hazardous condition. The closure plan shall include consideration for Hawaiian Home Commission Act (HHCA) beneficiaries, who reside or will reside in the KPFA community on HHCA lands in Pana'ewa. The method of permit site closure must not negatively impact HHCA lands or current/future beneficiaries.
- ~~19[46]~~. The Applicant shall comply with all applicable laws, rules, regulations, and requirements of other affected agencies.
- ~~20[47]~~. Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.