
Docket No. SP22-414

Yamada & Sons, LLC

(Request for Establishment of a Quarry Operation, Related Improvements and Activities)

Tax Map Key: (3) 2-1-013:002 (por)

Staff Report

Action Meeting
September 7, 2022



Daniel Orodener, Executive Officer

Submitted: 8/29/2022

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1. EXPLANATION OF PROCESS

The Special Permit process is unlike that used for district boundary amendments. The official evidentiary record is developed at the county-level before its Planning Commission. If the land area proposed for the Special Permit is over 15 acres approval must also be sought from the Land Use Commission. However the in-depth review process is conducted by the County Department of Planning and Permitting (“DPP”) and a report with a recommendation is presented to the County Planning Commission. The applicant can and usually does present a case, complete with expert witnesses, to the County Planning Commission. When the County Planning Commission approves a Special Permit it makes a decision based on the record, sets conditions to be placed on the project, and forwards a recommendation to the LUC. A denial at the County level does not result in the Special Permit being forwarded to the LUC for consideration.

The procedure at the LUC level is NOT a contested case hearing. As such witnesses are not necessarily presented by the applicant. Most importantly, the LUC’s decision must be made based on the record developed at the county-level and any amendments to conditions or additional conditions must be based on that same record. The LUC needs to be careful about allowing the introduction of any new information, whether inadvertently or purposely, into its deliberative process that might require a remand back to the County. If new information is uncovered, or the Commission feels the record is incomplete or there is public testimony on an issue not raised at the County level that the Commission feels needs to be addressed it must remand the matter back to the county for further proceedings rather than take evidence on the matter.

Section 205-6, Hawai‘i Revised Statutes (HRS), and Section 15-15-96(a), Hawai‘i Administrative Rules (HAR), provide the alternative actions that may be taken by the LUC in its consideration of the Special Permit application. The LUC may approve, approve with modification, or deny the Application. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval; so long as the additional restrictions or conditions are based on evidence contained in the record received from the County.

Guidelines for Special Permits

The guidelines for Special Permits are contained within 15-15-95, HAR, that allows certain “unusual and reasonable” uses within the Agricultural and Rural Districts. These guidelines are to be used in determining Docket No. SP22-414 Yamada & Sons, Inc.
Proposed Establishment of Quarry Operation and Related Improvements and Activities

whether a proposed use is “unusual and reasonable.”

1. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Commission.
2. The desired use would not adversely affect surrounding property.
3. The use would not unreasonable burden public agencies to provide streets, sewers, water, drainage, schools, fire, and police resources.
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

2. PROCEDURAL MATTERS

On November 23, 2021, Yamada and Sons, Inc. ("Applicant") filed a request with the County of Hawai'i Department of Planning ("DP") to establish a quarry operation with related improvements and activities located to the south of the Hilo Sanitary Landfill and adjacent to the east of existing quarries on the subject, State-owned property within the District of Waiākea, South Hilo, Hawai'i. The proposed quarry operation would be developed and conducted in a manner that was substantially representative of Land License No. S-359 and plans and details contained within the Special Permit Application dated November 23, 2021, with any supplemental material, and the representations made before the Windward Planning Commission. (Land License No. S-359 is effective for 20 years from 10/1/2021- 9/30/2041).

On July 7, 2022, the County of Hawai'i Planning Commission ("Planning Commission") considered the Applicant's request. There was no public testimony received by the Planning Commission. After due deliberation, at its meeting on July 7, 2022, the Planning Commission recommended approval of the request to the Land Use Commission ("LUC").

On July 29, 2022, the Hawai'i County Planning Department, provided notice to the LUC that the Special Permit had been approved by the Planning Commission and that the application would be forwarded for consideration by the LUC.

On August 1, 2022, the LUC received a preliminary copy of the decision and a portion of the record of the Planning Commission's proceedings on the Applicant's request. On August 15, 2022, the LUC notified the Windward Planning Commission that it had received the remaining portion of the record and had declared the filing complete.

The LUC set a tentative hearing date of September 7, 2022 for the SP22-414 docket. The time limit for completion of LUC review and action is therefore September 29th.

3. DESCRIPTION OF PROPOSED QUARRY OPERATION

The requested Special Permit is to allow the establishment of a quarry operation and related improvements and activities on a 37.882-acre portion of a larger 2,407-acre parcel of land in the State Land Use Agricultural District within the District of Waiākea, South Hilo, Hawai`i, TMK : (3) 2-1-013: 002 (por.) The State Board of Land and Natural Resources (“BLNR”) granted a twenty (20)-year license to the applicant in October 2021 to enter and quarry, stockpile, and remove rock and waste deposits for commercial use on the 37.882-acre permit area. A condition of approval set the life of the special permit to be co-terminus with this land lease (S-359).

The applicant effectively exhausted its supply of quality rock material from its existing and adjacent 14.99-acre quarry that began operation in November 2010 under Special Permit No. 10-110. The applicant now proposes to extract 25,000 tons of raw rock material per month, and with the excavation reaching a proposed depth of eighty (80) feet from existing grade, the quarry is expected to have an active lifetime of roughly thirty (30) years. Excavation of rock will be accomplished through the use of heavy equipment when possible. If impenetrable rock is encountered during excavation activities, drilling and blasting will be performed. As rock material is excavated, the perimeter of the permit area will have engineered fill with a 3:1 slope to avoid a sheer drop and facilitate future use should a suitable use be contemplated. A vegetative buffer will also be provided around the perimeter of the permit area.

The proposed new quarry operation would allow the applicant to continue harvesting essential rock resources or the manufacture of base course, and components of hot mix asphalt and concrete needed for the construction of many public and private projects. Excavated rock will either be stockpiled on-site or removed and trucked off-site to Yamada & Sons’ quarry baseyard located off of Railroad Avenue for crushing/processing and sale.

Hours of operation are reported to be limited to between 6:00 a.m. to 6:00 p.m., daily as specified by the State license. During peak operation, there will be a maximum of ten (10) employees within the permit area at any given time.

No crushing, finish processing or sales activities will occur within the permit area. Instead, excavated, raw rock material will either be temporarily stockpiled within the permit area or immediately removed to applicant’s baseyard facilities located along nearby Railroad Avenue via Ho`olaulima Road for crushing and processing into finish products. The applicant anticipates about 4-5 rock-hauling trucks, or 8 to 10 tractor trailers making about three (3) trips per hour between the proposed quarry and applicant’s baseyard and processing facilities. All activities will conform to the

3. SUMMARY OF REQUEST

The Applicant, Yamada and Sons, Inc., prepared its report in support of Special Permit (PL-SPP-2022-000012) to establish a proposed quarry operation of approximately 37.882-acres within Tax Map Key (3) 2-1-013:002 (por)., owned by the State of Hawai`i (“State”).

Special Permit (PL-SPP-2022-000012) (“SP”)

The proposed boundaries for the special permit application are shown in attached Exhibit 1. The proposed quarry area is south of the Hilo Sanitary Landfill and adjacent to the east of existing quarries on the subject, State-owned property with the District of Waiākea, South Hilo, Hawai`i.

State Land Use Commission Special Use Permit Considerations

Chapter 343, HRS:

As the proposed quarry use is situated on land owned by the State of Hawaii, the applicant prepared an Environmental Assessment for the project. By letter dated January 21, 2020, the State Department of Land and Natural Resources approved a Final Environmental Assessment(FEA) and issued a Finding of No Significant Impact(FONSI) related to the sale of a license at public auction affecting the permit area that will allow for quarrying and stockpiling activities within the permit area.

Special Permit Authority:

State Land Use law (HRS 205- 6) requires an applicant to secure a Special Permit from either the County Planning Commission or State Land Use Commission (LUC) in order to use land in the Agricultural or Rural districts for uses that are not permitted outright and that are considered unusual and reasonable.

The County found that the proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), 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 use. The Legislature, recognizing that lands within the Agricultural district may 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, provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District.

Although the property is designated for Agricultural uses by both the State Land Use Commission and the County Zoning Code, its soils are considered very poor and not optimal to support agricultural activities. The request is considered unusual and reasonable in that the proposed quarry area has no direct relationship to any potential agricultural activities that could be conducted upon the property given its proximity to existing quarries and other nearby industrial uses such as the Hilo landfill, County Mass Transit Agency baseyard, County landfill, and airport.

The County therefore found that based on the preceding circumstances, approval of the request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions.

The lease from BLNR was referenced in the County decision. The lease termination requirements for Yamada and Sons are stated in item #35 of the lease agreement:

35 . The Licensee shall, at the end of the term or other sooner termination of this License, peaceably deliver unto the Licensor possession of the License Area in a clean and orderly condition, together with all improvements existing or constructed thereon or Licensee shall remove such improvements, at the option of the Licensor. Furthermore, upon the expiration, termination, or revocation of this License, should the Licensee fail to remove any and all of Licensee's personal property from the License Area, after notice thereof, the Licensor may remove any and all personal property from the License Area and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Licensee, and the Licensee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the License.

The Windward Planning Commission (“WPC”) voted to approve the application at

its public hearing on July 7, 2022, and to send a favorable recommendation to the LUC for final disposition. The WPC based its favorable recommendation on the reasons provided in its Findings Report.

By establishing this new quarry area, the expected lifespan of the special permit was represented to be set to co-terminus with the 20 year land lease which was granted to the applicant in October 2021 by the BLNR. Though the quarry is expected to have an active lifetime of roughly thirty (30) years (till approximately 2052), the BLNR land lease would end in October 2041.

4. PLANNING COMMISSION GROUNDS FOR SPECIAL PERMIT APPROVAL

In addition to the above listed criteria for a State Special Permit, the Planning Commission is required to consider the criteria listed under Section 6- 3(b)(5) (A) through (G) of its rules of practice and procedure. Those rules mirror the requirements of Chapter 205 and rate essentially the same as LUC rules Section 15-15-95 HAR:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations (Chapter 205, HRS and Land Use Commission Rules).

As mentioned previously, the County found approval of this request would not be contrary to the objectives of the State Land Use Law and considered an unusual and reasonable use of the agricultural land due to the poor soil quality that is not conducive towards agricultural activities. Therefore, the proposed request would not adversely affect the preservation and agricultural use of the County' s prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties.

Surrounding uses include the Hilo International Airport a little over a mile to the north; the County skeet range adjacent to the north; existing Yamada & Sons quarry and former quarries adjacent to the west; the County landfill and related solid waste operations about 600 feet to the northwest; County stockpile area approximately 2, 000 feet to the northeast; the County' s drag strip about 3, 000 feet to the south; and the County' s Mass Transit baseyard about 1, 500 feet to the southwest. The nearest dwellings are situated within the Pana`ewa Farm Lots, approximately 2, 000 feet to the west of the permit area.

The existing quarry mining that has occurred since 2010 on the property adjacent to the permit area has been ongoing with existing levels of noise, dust and fumes generated by the operation. The proposed quarry site and surrounding areas have been subject to quarrying activities under licenses issued by the State and Special Permits issued by the County Planning Commission and State Land Use Commission over the past 26 years.

The Planning Department was not aware of any complaints that had been generated by these on-going quarrying activities in this particular area. The closest dwellings are located about half a mile from the proposed quarry site. Potential impacts typically associated with quarry operations include dust and noise.

However, these impacts can be mitigated by the applicant complying with Department of Health rules and regulations related to air quality and noise. A condition of approval will also limit hours of operation to between 6:00 a. m. to 6:44 p.m. daily. Furthermore, as required by the State land license, the applicant will maintain a vegetative buffer around the permit area. Finally, the DLNR land license for the site requires that upon closure or abandonment of the quarry, the applicant leave the site in a non- hazardous condition. The preceding will be added as a condition of approval.

The past 26 years of quarrying activities have demonstrated that this particular location, and the project site in particular, is well-suited to support quarrying activities with minimal adverse impact to the surrounding community. Therefore, the proposed use is not anticipated to adversely affect surrounding properties.

C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

Access to the permit area is provided by Ho`olaulima Road, a two- lane road within State land that the County maintains, with a meandering pavement width of about 30 feet that ranges in condition from excellent to poor. Ho`olaulima Road is an extension of Leilani Street that also serves the County' s Hilo landfill, its sort station, greenwaste, and other county-operated facilities within the immediate area. According to the application, all quarry associated traffic will be accommodated solely by Ho`olaulima Road, thereby keeping all traffic generally within the County' s solid waste processing complexes and internal roadway network.

The applicant anticipated that about 4 to 5 rack- hauling trucks, or 8 to 14 tractor trailers

would be making about three (3) trips per hour between the proposed quarry and applicant's baseyard and processing facilities. However, due to the damage to the roadway and safety concerns between regular vehicle traffic to solid waste facilities and other recreational facilities in the area, the Department of Environmental Management has required that the current use of rock haulers cease once quarrying operations of the pen-nit area commences. Instead, the applicant must use highway legal vehicles to haul quarried materials from the quarry site to the applicant' s processing facilities. Furthermore, DEM requires that the applicant inform them of the starting date of the quarry operations. The preceding will be added as a condition of approval.

According to the State DOT, the proposed project will have no anticipated impact to State highways.

While the proposed permit area is situated 1. 75 miles from the Hilo International Airport, the proposed use does not underlie any approach or departure flight tracks. Furthermore, due to the nature of the proposed quarry operations as an extension of an existing and adjacent quarry, there does not appear to be any situation that would be cause for concern upon airport operations, such as creating a wildlife attractant, visual glare due to standing water or any aerial obstructions. However, DOT-Airport' s Division requested that the applicant coordinate with the Hawai`i Airports District Manager to ensure compliance with existing regulations. The preceding will be added as a condition of approval.

“If applicable, the applicant will be required to secure an Air Pollution Control Permit, a National Pollutant Discharge Elimination System (NPDES) permit and an Underground Injection Control (UIC) permit from the State Department of Health before the commencement of quarry activities.”

Electrical and telephone are not required for the quarry operation. Water for dust suppression will either be trucked to the site or provided by catchment tank. Portable toilets will be provided and maintained for employees to use at the site. Medical, police and fire services are all available nearby in Hilo.

(D) 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 property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, various " non-agricultural" services may be allowed. There are many areas in the County where lands within the Agricultural District are not in active agricultural productivity. As mentioned below, the conditions in the area are not optimal for agricultural uses and there is no evidence that agricultural activity has occurred on the subject property for decades.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The subject property is rated " E" or " Very Poor" for agricultural productivity by the Land Study Bureau and Other Important Agricultural lands by the ALISH Map. The soils in this area are not suitable for many types of agricultural uses. Surrounding parcels are also in quarry use and industrial- related activities.

(F) The use will not substantially alter or change the essential character of the land and the present use.

The proposed permit area is vacant of any structures or improvements, however, due the area includes past stockpiling and baseyard activities within its eastern portion has left the land partially barren with the remainder consisting primarily of an albizia and weedy forest with few native trees. With the exception of a required vegetative buffer, the trees will be cleared, and the area will be quarried. The County found that given the historic use of the property and surrounding areas for quarry uses, the proposed quarry use will not substantially change the character of the land.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan (GP) 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.

While the GP LUPAG Map designates the permit area as " Important Agricultural Land", the GP it also notes that, "*Because of the scale of the Land Use Pattern Allocation Guide maps used to designate Important Agricultural Land, the location of these lands should be verified by more detailed snapping when considering specific land use decisions.*" Thus, the County found that, given the poor soil quality and the historic use of the property for similar quarry purposes, the subject request is not contrary to the General Plan LUPAG Map. The County also found that the project will complement the following goals and policies 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.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii

Natural Resources and Shoreline Elements:

- The County of Hawaii should require users of natural resources to conduct their activities in a manner that avoids or minimizes adverse impacts on the environment.
- Ensure that alteration to existing land forms and vegetation, except crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

The County noted that in order to provide for raw construction materials that are vital to the construction industry, quarries must be established in locations where there is an abundance of these raw materials. For this reason, quarries, while industrial in character, cannot be confined to Industrial-designated areas. As evidenced by the issuance of Special Permits for other quarries within the subject property and surrounding area, this particular area contains the raw materials essential to the construction industry. The County found that the establishment of the proposed quarry in

this particular location will not adversely impact agricultural resources, as many of the uses are industrial in nature.

There are many areas in the County where lands within the Agricultural District are not in active agricultural productivity. Because quarrying operations are resource- based, sites are restricted in location by the availability of raw materials. Other previous and ongoing quarry activities in the vicinity of the project site have shown that the materials are available in this area, which the County believes makes this an appropriate site to establish a quarry.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes, relating to the coastal zone management program. The permit area is located approximately 2.9 miles from the nearest coastline and does not contain streams or waterways that empty into the sea and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities, nor will the property be affected by coastal hazards. The property is located well outside of the Special Management Area (SMA) and tsunami evacuation zone. Additionally, there is no designated public access to the shoreline areas or mountain areas over the property. The County opined that the proposed use is not contrary to the objectives of Chapter 205A, Hawaii Revised Statutes.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawaii 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 by the County and evaluated in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site. The County concluded:

Investigation of valued resources:

- 1) An archaeological inventory survey (AIS) of the permit area was conducted by ASM affiliates and detailed in a report dated September 2019;
- 2) a cultural impact assessment (CIA) of the permit area was conducted by ASM affiliates and detailed in a report dated September 2019;
- 3) as part of the EA process, the office of Hawaiian Affairs, the Keaukaha-Pana`

ewa Farmers Association, and the Sierra Club were also consulted by mail to determine whether they had any information on natural or cultural resources that might be present or affected; and 4) as part of the EA process, a walk-through biological survey of the entire permit area was performed over the course of five days in April and July 2019.

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

The AIS concluded that, "... *the Yamada & Sons, Inc. quarry and stockpiling project will not impact any known historic properties*" and that " *no further work needs to be conducted within the [project site]...* " The draft AIS was submitted to SHPD as part of the EA process in 2019, however, they did not provide any concurrence to the "no impact" determination contained therein. The draft AIS was submitted to SHPD as part of this Special Permit review, however at the date of this writing, the County had not received any comments.

The CIA concluded that there were no known customary or Native Hawaiian cultural rights exercised within the permit area.

According to the EA, there are no caves, springs, pu`u, native forest groves or other natural features. Combined with the highly disturbed vegetation that is dominated by invasive, weedy species and secondary growth in most areas, the permit area does not contain the quality of resources that would be important for native gathering. The EA concludes that, " *While the gathering of natural resources from the Pana`ewa forest remains an important part of the cultural practices of this community, no explicit reference was made to such practices occurring in the actual area proposed for the quarry license, which has experienced extreme disturbance, is dominated by invasive trees, and other than isolated `ōhi`a and hala trees does not contain other native trees or `awa. Because of the proposed location outside intact `ōhi`a forest, it is not anticipated that the proposed quarry project will impact these cultural practices, based on the information obtained through the consultation efforts.* "

The biological surveys, as detailed in the EA, concluded that it is "... *unlikely that many other species of native forest birds would be expected to use the project site due to its low elevation, alien vegetation, and lack of adequate forest resources. However, it is not inconceivable that Hawaii `amakihi are sometimes present, as some populations of this native honeycreeper appear to have adapted to the mosquito-borne diseases of the*

Hawaiian lowlands. The common migratory shorebird Pacific golden plover, which is often seen inland in grassy areas, may occasionally be present. "

In summary, the surveys found no rare, threatened, or endangered species of plants or animals or their habitats within the permit area. However, as the Hawaiian Hawk, Hawaiian Hoary Bat, and Hawaiian Seabirds may be found in the vicinity of the project site, the applicant proposed mitigation measures in the EA. Furthermore, as the permit area contains a few isolated `ōhi`a trees, the applicant proposed to implement mitigation protocols to minimize the spread of Rapid `Ōhi`a Death (ROD).

In their memo dated April 22, 2022, the DLNR Division of Forestry and Wildlife (DOFAW) concurred with the proposed mitigation measures outlined above. In addition, they identified the State listed Hawaiian Goose as having the potential to occur in the vicinity of the permit area, thus they recommended mitigation measures to protect that species.

Possible adverse effect or impairment of valued resources: Historic and cultural resources may inadvertently be discovered during quarry operations. The site is not adjacent and/ or proximate to the shoreline. As such, gathering of marine life, fishing and coastal access is not an issue. Endangered and threatened plant and animal species may be adversely affected during vegetation clearing and ongoing quarry operations.

Feasible actions to protect native Hawaiian rights and valued resources: 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.

A condition of the permit will require the applicant to stop work and notify the DLNR-SHPD should any unidentified sites or remains be encountered and proceed with quarry activities only upon receiving an archaeological clearance from the DLNR-SHPD.

Further conditions of approval will address mitigation protocols to protect any endangered or listed animal and plant species that may be found within the permit area.

The County therefore concluded, based on the preceding analysis that the quarry

operation and accessory uses within the project site are an unusual and reasonable use of the land consistent with the objectives sought to be accomplished by the State Land Use Law and Regulations.

At the July 7, 2022 Windward Planning Commission hearing, the Planning Director updated his recommendation on the floor to include amendments to conditions outlined in the applicant's June 27, 2022 letter to the Planning Commission. These amendments were the result of discussions between the applicant, the Keaukaha-Panā'ewa Farmers Association (KPFA) and the Department of Hawaiian Home Lands (DHHL) to address concerns over potential impacts from the proposed quarry project. Both the KPFA and DHHL submitted letters in support of the proposed condition changes.

The updated conditions included amendments to Condition No. 4 (hours of operation), Condition No. 5 (use of rack haulers and hauling traffic route), and new Condition No. 8 (air quality monitoring plan), Condition No. 9 (best management practices), and Condition No. 18 collaborative quarry closure plan development). Ultimately, the Windward Planning Commission voted to approve the permit with the above mentioned condition changes and forward it to the State Land Use Commission for final determination.

5. PLANNING COMMISSION RECOMMENDATION

On July 7, 2022, the Planning Commission voted to recommend approval of the Applicant's request with the following conditions and to forward its decision to the LUC for final action.

Permit Conditions:

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, 2021, 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. Active quarry 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. 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.
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 Keaukaha Pana'ewa Farmers Association (KPFA) and the Department of Hawaiian Home Lands (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, 2021,

any supplemental material, and the representations made before the Windward Planning Commission.

10. 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. 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. 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. 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. 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. 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. 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. 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.

17. 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 Fanners Association (KPFA) and the Department of Hawaiian Home Lands (DHHL). The closure plan shall include mitigation efforts to leave the permit site in a nonhazardous condition. The closure plan shall include consideration for Hawaiian Homes 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. The Applicant shall comply with all applicable laws, rules, regulations, and requirements of other affected agencies.
20. 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.

The approval did not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

6. OPSD RECOMMENDATION

The Office of Planning and Sustainable Development (OPSD) recommends the approval of the application for a Special Permit, SP22-414, as transmitted by the County of Hawai`i, pursuant to the Windward Planning Commission's recommendation for approval, including the conditions of approval, dated July 7, 2022.

7. STAFF RECOMMENDATION

If the Commission is satisfied that the conditions for a State Special Permit and a County special permit have been met, and that the Planning Commission's recommended modifications to the conditions associated with its decision are acceptable, the Commission may move forward to grant the Special Permit as decided by the Windward Planning Commission.

Staff also recommends that Planning Commission's Condition 1 be amended to add that the Applicant "will also acknowledge and abide by the terms of its lease agreement with the State of Hawai'i as agreed to."

REFERENCES

8. STATE AND COUNTY PLANS AND PROGRAMS

The proposed 37.882 acre portion of the larger 2,407 acre parcel of land to be used as the project site is designated within the State Land Use Agricultural District.

LAND USE AND OTHER REGULATORY CONSIDERATIONS

1. Chapter 343, HRS: Finding of No Significant Impact

By letter dated January 21, 2020, the State Department of Land and Natural Resources approved a Final Environmental Assessment (FEA) and issued a Finding of No Significant Impact (FONSI) related to the sale of a license at public auction affecting the Project Site that would allow for quarrying and stockpiling activities within the Project Site. The FEA and FONSI determination, in its entirety, accompanied this Special Permit application on the LUC website as Document #1, Part 1.

2. State Land Use Designation: Agricultural

The Project Site is situated within the State Land Use Agricultural District (see Doc.#1, Part#1 Pg. 10 -Figure 4— State Land Use which includes lands for the cultivation of crops, aquaculture, raising livestock, wind energy facility, timber

cultivation, agriculture- support activities (i. e., mills, employee quarters, etc.) and land with significant potential for agriculture uses. Uses permitted in the highest productivity agricultural categories are governed by statute. Uses in the lower-productivity categories— C, D, E or U — were established by the Land Use Commission to include those uses allowed on A or B lands as well as those stated under Section 205- 4. 5, Hawai` i Revised Statutes. Note that agricultural suitability of soils within the Project Site is considered as Class E, or Very Poor.

3. County Zoning: Agricultural- Z acres minimum lot size (A-Zoa)

The Agricultural (A) zoning district provides for agricultural and very low density agriculturally- based residential use, encompassing rural areas of good to marginal agricultural and grazing land, forest land, game habitats, and areas where urbanization is not found to be appropriate. (See Doc. #1- Part 1- Pg. 11- Figure 5 — Zoning.)

4. General Plan Designation: Important Agricultural Lands

The County of Hawaii General Plan is the policy document for the long-range comprehensive development of the island of Hawaii. The General Plan Land Use Pattern Allocation Guide (LUPAG) map, as shown on Figure 5— General Plan LUPAG Map, classifies the Project Site as Important Agricultural Lands, and describes these lands as those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. However, the General Plan also notes that, "*Because of the scale of the Land use Pattern Allocation Guide maps used to designate Important Agricultural Land, the location of these lands should be verified by more detailed mapping when considering specific land use decisions.*"

5. Coastal Zone Management, HRS, Chapter 205A

The entire State of Hawaii lies within the Coastal Zone Management area. The intent of the Coastal Zone Management Program is to guide and regulate public and private uses in the coastal zone management area with respect to recreational resources, historic resources, public access to the shoreline, scenic and open space resources, coastal ecosystems, marine resources, economic uses, coastal hazards, managing development, public participation, and beach protection.

6. Special Management Area (SMA)

The Special Management Area is a part of the Coastal Zone Management Program that is regulated by the County, established to promote the State's policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to ensure that adequate public access is provided to publicowned or used beaches, recreation areas, and natural reserves, by dedication or other means. The Project Site is located approximately 2. 9 miles from the nearest coastline and at least 1. 9 miles from the closest SMA boundary.

7. Integrated Resources and Solid Waste Management Plan IRSWM) - 2019

Due to the close proximity of the Hilo Transfer Station, the sort station, green waste facility and recently closed landfill, the IRSWM previously identified existing operational and abandoned quarry sites as a potential location for future expansion of the South Hilo landfill. However, the 2019 IRSWM update noted that a study of this possible expansion into nearby abandoned quarry sites was deemed unfeasible due to the proximity of the Hilo International Airport, among other considerations. Solid waste residuals that are not recycled are transported to the West Hawaii Sanitary Landfill at Pu`uanahulu in North Kona.

9. SUMMARY OF COMMENTS BY AGENCIES AND PUBLIC COMMENTS ON THE SPECIAL PERMIT APPLICATION

COUNTY

Department of Environmental Management (“DEM”)(memo dated April 13, 2022)

The Solid Waste Division noted that the current use of rock haulers between the proposed quarry site and the Applicant's processing facilities along Hoolaulima Road shall end upon the commencement of quarrying operations within the project site. The Applicant will notify DEM on anticipated start- date for quarry operations and will abide with the requirements of DEM regarding the use of rock haulers on Hoolaulima Road.

The Applicant does request, however, that a specific condition prohibiting the use of rock haulers and requiring the use of highway- legal vehicles to haul quarried material

along Hoolaulima Road not be included as a condition of the Special Permit, should it be approved, as conditions or situations may change given that the use of rock haulers have been ongoing for more than 30 years with no incident or conflict with users of this road. Furthermore, the County of Hawai`i has full authority to control traffic along Hoolaulima Road without having to place restrictive conditions within the Special Permit that would then necessitate an amendment by the State Land Use Commission should conditions regarding the permitted types of quarry- related vehicles change, as it did in this case.

Department of Water Supply (letter dated April 7, 2022)

The Department of Water Supply (DWS) had no objections to the proposed quarry operations as County water is not necessary to support quarry operations.

Department of Public Works (memo dated April 22, 2022)

The Applicant will comply with the requirements of Chapter 10, Hawaii County Code regarding Erosion and Sedimentation Control. Any new driveway connections and construction within the Hoolaulima Road right- of way will comply with Chapter 22, Hawaii County Code regarding Streets, including the provision of adequate sight distances. The Applicant understands that a drainage plan may be required by the Planning Department. Regardless of whether a drainage plan is required or not, quarry operations will ensure that any activity-related runoff will be disposed of on- site and not directed towards any adjacent properties.

Police Department (memo dated April 5, 2022)

The Police Department does not anticipate any impact to traffic and/ or public safety concerns and has no objection to the proposed quarry project.

There were no other County comments.

STATE

Department of Health— Clean Air Branch via email dated April 1, 2022)

If required, the Applicant will secure an air pollution control permit from the Clean Air Branch and comply with all applicable conditions and requirements. No demolition of

existing structures or activities involving asbestos are proposed. Quarrying activities have the potential to produce fugitive dust emissions. The topography and nature of quarrying on this landscape, which occurs in a pit that deepens over time as materials are excavated, helps further reduce air quality impact and even noise. Mitigation for dust generated during initial clearing operations would be part of the dust control management measures described below. Water trucks for spraying are available during unusually dry periods, during which operations may generate dust.

Dust control management measures to be applied include: 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; 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 Hoolaulima Road; All quarry-related traffic between the license area and our baseyard facility will be limited to one haul route via Hoolaulima Road; and The haul route will also be monitored by Yamada and Sons, Inc. supervisory personnel. If Applicant's haul vehicles track shoulder material onto Hoolaulima Road they will deploy their water truck(s) and/ or pavement sweeper(s) equipped with dust suppression systems to clean off the haul route as needed.

Department of Health— Clean Water Branch (via email dated April 1, 2022)

The Applicant will apply for and secure a National Pollutant Discharge Elimination System (“ NPDES”) permit if deemed necessary. The Applicant will coordinate with the Clean Water Branch to secure necessary approvals and permitting. State Department of Transportation (memo dated April 20, 2022). While the proposed quarry site is located within 1. 75 mile from the Hilo International Airport (“ITO”), the quarry operations itself will not involve standing water that will create a wildlife attractant or other hazards. If required, the Applicant will coordinate proposed quarry-related activities with Mr. Steven Santiago, ITO Airport District Manager, to ensure compliance with existing regulations. It is noted that the Highways Division found that the proposed quarry activities will have no

anticipated impact to State highways.

State DLNR— Division of Forestry and wildlife (memo dated April 22, 2022)

The Forestry and Wildlife Division concurred with the Applicant' s mitigation measures included within the Final Environmental Assessment to avoid construction and operational impacts to State- listed species, as well as measures to prevent the spread of Rapid `Ōhi`a Death.

The Applicant acknowledges that the listed Hawaiian Goose (Nene) has the potential to occur in the vicinity of the proposed quarry site and that any harassment or harm is against State law. The Applicant will manage its operations to ensure that quarrying activities within 100 feet (30 meters) of any Nene present within the quarry site or its immediate vicinity will immediately cease, and the bird not be approached. work will continue only after the bird leaves the area of its own accord. If a nest is discovered at any point, the Applicant will contact the Hawaii Island Branch DOFAW Office.

State DLNR—Land and Engineering Divisions (memos dated March 31, 2022)

Both the Land and Engineering Divisions within the State Department of Land and Natural Resources had no comments specific to the operational aspects of the proposed quarry.

PUBLIC COMMENTS

Ms. Antoinette Almeida

Resident of Pana`ewa Hawaiian Home Lands Community Assoc. (email dated April 12, 2022

Potential noise and dust concerns from the existing and proposed quarry operations, as well as odor and vermin from the dump, is a concern, especially on windy days. The Applicant can only manage activities occurring on lands that it has a license from the State to operate upon. For the potential noise and dust generated by quarry- related operations, beyond complying with State clean air and clean water regulations, the Applicant will maintain a buffer of existing vegetation around the proposed quarry site, as it does for its existing quarry site located immediately adjacent to the west.

As previously mentioned, the topography and nature of quarrying on this landscape, which occurs in a pit that deepens over time as materials are excavated, helps further reduce air quality impact and even noise. Locationally, this proposed quarry site is not appreciably closer to the existing communities of Pana`ewa Homesteads and Keaukaha.

Keaukaha-Pana`ewa Farmers Association

The Applicant wishes to inform the Planning Department that it continues to communicate with the Keaukaha-Pana`ewa Farmers Association (KFPA) regarding the proposed quarry site and its related activities and operations.

A Zoom meeting was held with KFPA members and the Department of Hawaiian Home Lands on April 12, 2022 and two (2) site inspections by KFPA members were conducted. A copy of the Notice of Hearing before the Windward Planning Commission regarding this Special Permit application was emailed to KFPA President, Maile Lu`uwai.

The Applicant looks forward to receiving any formal comments from the KFPA as a result of its meeting and site inspections and will do its best to address any concerns.

10. IMPACTS UPON THE RESOURCES OF THE AREA

Surrounding Zoning/ Land Uses

The Project Site is situated approximately 3.5 miles from Downtown Hilo, within an area that has been witnessed to decades of industrial-type of uses, such as:

- a. Hilo International Airport a little over a mile to the north;
- b. County skeet range adjacent to the north;
- c. existing Yamada and Sons quarry and former quarries adjacent to the west;
- d. County landfill & related solid waste operations about 500 feet to the northwest; e. County stockpile area approximately 2, 000 feet to the northeast;
- f. County' s drag strip about 3, 000 feet to the south; and
- g. County' s Mass Transit baseyard about 1, 500 feet to the southwest.

The most notable, non- industrial type use within proximity to the Project Site is the Pana`ewa Farm Lots located along the east side of Railroad Avenue, approximately 2, 000 feet to the west of the Project Site. Lands generally to the east and south are State- owned

lands which are vacant and designated for agricultural uses.

ALISH: other Important Agricultural Land

Soils within the Project Site are classified as Other Important Agricultural Land according to the Agricultural Lands of Importance to the State of Hawai'i. These comprise of lands other than Prime or Unique Agricultural Land that is also of statewide or local importance to agricultural use.

Land Study Bureau's Detailed Land Classification System: " E" or" Very Poor"

The soils within the Project Site are classified as Class " E" or "Very Poor" for agricultural productivity

US Soil Survey: Papai extremely stony muck (rPAE)

The project site soil is classified as Papai extremely stony muck (rPAE), a well- drained, thin (i. e., less than 10 inches thick) extremely stony organic soil overlying ` a` a lava bedrock. These soils are found at elevations ranging from sea level to 1, 000 feet and receive between 90 to 150 inches of annual rainfall. Permeability is rapid, runoff is slow, and the erosion hazard is slight for this soil. Areas with this soil are mostly covered in woodland, with some small areas used for pasture, orchards, and truck crops. The Natural Resources Conservation Service classifies it as a class VIIs soil, meaning it has very severe limitations for use for cultivation, and is therefore only useful as pastureland, wildlife or woodland.

FIRM: Zone X

The entire project site is designed within Zone " X" - determined to be outside the 500-year flood plain. There are no known drainageways traversing through the Project Site.

Flora/ Fauna Resources

A walk-through biological survey of the entire Project Site was performed over the course of five days in April and July 2019. These surveys found that approximately 85% of the Project Site has been disturbed in the past through surface quarrying, stockpiling, roads and other activities. Most of this disturbed area is dominated by a dozen or so non- native trees such as Albizia, strawberry guava, gunpowder tree and false ka ma n i, among a few others. The dense canopy of non-native trees results in a sparse understory of mostly

invasive tree seedlings. Overall, no listed, candidate or proposed endangered plant species were found. During three visits in April 2019, only non- native bird species were observed within the Project Site, such as abundant Japanese white- eyes, common mynahs, northern cardinals and various finches and doves. The only native bird observed was the Hawaiian hawk flying above the Project Site. These surveys, as detailed in the EA, concluded that it is *"... unlikely that many other species of native forest birds would be expected to use the Project Site due to its low elevation, alien vegetation and lack of adequate forest resources. However, it is not inconceivable that Hawai`i `amakihi Hemignathus virens) are sometimes present, as some populations of this native honeycreeper appear to have adapted to the mosquito- borne diseases of the Hawaiian lowlands. The common migratory shorebird Pacific golden- plover(Pluvialis fulva), which is often seen inland in grassy areas, may occasionally be present."*

In summary, the studies found no rare, threatened or endangered species of plants or animals or their habitats within the Project Site.

However, in order to avoid impacts to the endangered Hawaiian hawk and the Hawaiian hoary bat, the Applicant will refrain from activities within the Project Site that will disturb or remove shrubs or trees taller than 15 feet between June 1 and September 15, when Hawaiian hoary bats may be sensitive to disturbance. If land clearing occurs between the months of March and September, inclusive, a pre-construction hawk nest search by a qualified ornithologist using standard methods will be conducted. If Hawaiian hawk nests are present, no land clearing will be allowed until October, when hawk nestlings will have fledged.

Finally, the quarry would agree to shield any exterior lighting from shining upward to minimize the potential for disorientation of seabirds, in conformance with the County' s outdoor lighting standards.

As the Project Site contains a few isolated `ōhi`a trees, the Applicant will implement the following mitigation protocols to minimize the spread of Rapid `Ōhi`a Death (ROD):

- 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;

- Treat any unavoidable scars on `ōhi`a trees that result from clearing to prevent infestation of the fungus; Stack all removed `ōhi`a trees and dispose of by burying or chipping; do not remove from project site.
- Decontaminate boots and work tools before and after working in an area with `ōhi`a trees;
- Implement any other recommendations imposed as part of the Special Permit.

Archaeological Resources

An archaeological inventory survey of the Project Site was conducted by ASM affiliates and detailed in a report dated September 2019 (see Appendix 2 of FEA). Fieldwork consisted of a pedestrian survey that provided 100% coverage of the Project Site. No archaeological sites or other historic properties of any kind were identified. Past ground disturbance activities within the Project Site indicate that the potential for subsurface archaeological resources are unlikely. The study concluded " *that the Yamada & Sons, Inc. quarry and stockpiling project will not impact any know historic properties" and that no further work needs to be conducted within the [Project Site]...* ".

Cultural or Native Gathering Rights

A cultural impact assessment (CIA) of the Project Site was conducted by ASM affiliates and detailed in a report dated September 2019 (see Appendix 3 of FEA). According to the study, there are no known customary or Native Hawaiian cultural rights exercised within the Project Site. The Hawai`i State Supreme Court' s " PASH" and "Ka Pa`akai 0 Ka Aina" decisions require decision- makers to consider a project' s impact to native Hawaiian gathering and fishing rights. Specifically, there must be a discussion of the cultural, historical, and natural resources and associated traditional and customary practices of this site and the impact of this project to these resources and practices.

In addition to the CIA and as part of the environmental assessment process, the Office of Hawaiian Affairs, the Keaukaha- Pana`ewa Farmers Association, and the Sierra Club were also consulted by mail to determine whether they had any information

on natural or cultural resources that might be present or affected.

Given the that the Project Site is absent of any archaeological features due to its intensively disturbed condition, it can also be reasonably concluded that native Hawaiian cultural practices are not being exercised within the Project Site. There are no caves, springs, pu`u, native forest groves or other natural features. Combined with the highly disturbed vegetation that is dominated by invasive, weedy species and secondary growth in most areas, the Project Site does not contain the quality of resources that would be important for native gathering. The EA concluded that, "*While the gathering of natural resources from tie Pana`ewa forest remains an important part of the cultural practices of this community, no explicit reference was made to such practices occurring in the actual area proposed for the quarry license, which has experienced extreme disturbance, is dominated by invasive trees, and other than isolated `ōhi`a and hala trees does not contain other native trees or `awa. Because of the proposed location outside intact `ōhi`a forest, it is not anticipated that the proposed quarry project will impact these cultural practices, based on the information obtained through the consultation efforts.*"

Public Access

There is no record of a designated public access to the shoreline or mountain areas that traverses through the Project Site

11. ADEQUACY OF INFRASTRUCTURE AND FACILITIES

PUBLIC UTILITIES AND SERVICES

1. Access

Access to the Project Site is provided by Hoolaulima Road, historically referred to as "Ammunition Dump Road". Hoolaulima Road is an extension of Leilani Street that also serves the County's Hilo Transfer Station, its sort station, greenwaste and other county operated facilities within the immediate area (see Figure 2— Vicinity Map). Hoolaulima Road is County- maintained, two- lane road with a meandering pavement width of about 30 feet that ranges in condition from excellent to poor. The Applicant emphasizes that access between the Project Site and its baseyard and processing facilities along Railroad Avenue, all quarry associated traffic will be

accommodated solely by Hoolaulima Road, thereby keeping all traffic generally within the County's solid waste processing complexes and internal roadway network. Note that no State- owned highways will be accessed by any quarry- related vehicles, and therefore no adverse impact upon State- owned highway facilities is anticipated.

During the early consultation period as part of the environmental assessment process, the Department of Environmental Management (DEM) stated that once consolidation and resubdivision of certain properties in and around the South Hilo Sanitary Landfill is complete, the State will issue a new Executive Order to the County that will require that a new road lot be created and dedicated to the County of Hawai` i, upon which all rock haulers must then be street legal. Once informed by the County, the Applicant will switch to street- legal tractor- trailers for rock hauling, which will double the number of vehicle trips between the quarry and Applicant's processing facilities due to its smaller size.

2. Traffic

As previously mentioned, transport of excavated raw rock material to the Applicant's baseyard facilities will be via Hoolaulima Road between the Project Site and its baseyard facilities. About 4 to 5 rock-hauling trucks, or 8 to 10 tractor trailers will be making about three (3) trips per hour. Quarry-related traffic along Hoolaulima Road is not expected to significantly increase since the proposed quarry will simply be replacing the Applicant's existing and adjacent quarry that has practically exhausted its rock resource. Therefore, it is expected that that same rock-transport trucks will be used at the same frequency of travel as it currently exists.

Once a new access road serving the Project Site and nearby County facilities is created and transferred to the County, quarry- related traffic will be restricted to street- legal vehicles only, roughly doubling the vehicle trips between the proposed quarry and nearby processing yard. However, overall vehicle trips along any new access to this project area is not expected to increase significantly due to the anticipated reduction in overall vehicle trips due to the recent closure of the South Hilo Sanitary Landfill. The Applicant will continue to coordinate with the County

regarding the shared use of Hoolaulima Road and any new access road, as it has done for many years.

3. Water

County water service is not needed at the Project Site. Water for dust suppression will either be trucked to the Project Site or an on- site water catchment system will be installed.

4. Wastewater

Portable toilet facilities will be provided within the Project Site for employee use.

5. Solid Waste

Any solid waste generated by the proposed quarry operations, such as disposal of greenwaste, will be conveniently disposed of at the nearby County solid waste disposal facilities located along Hoolaulima Road. Abandoned man- made material within the Project Site will be removed and properly disposed of within the nearby County solid waste facilities.

6. Essential Utilities and Services

Typical utilities, such as electrical and telephone services, are not necessary or required to support the proposed quarry and stockpile operations within the Project Site.

7. Public Safety

As the Project Site is located within the City of Hilo, police, medical and fire services are readily available

12. CONFORMANCE WITH THE SPECIAL PERMIT CRITERIA

APPLICABLE REGULATIONS

Land Use Commission (LUC) State Special Permit (SP or SUP) §15-15-95 and §205- 6 Hawaii Revised Statutes

Standards for reviewing a Land Use Commission Special Permit are found under Title 15 Department of Business, Economic Development, and Tourism; Subtitle 3 State Land Use

Commission, Chapter 15 Land Use Commission Rules, Subchapter 12 Special Permits, §15-15-95 of the Hawaii Administrative Rules.

Per §205-6 Special Permit HRS, the county planning commission may permit certain "*unusual and reasonable uses*" within agricultural and rural districts other than those for which the district is classified. "*Special Use Permits for land area greater than fifteen acres shall be subject to approval by the State Land Use Commission.*" The subject land area is approximately 37.882 acres.

Certain "*unusual and reasonable uses*" within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining what an "unusual and reasonable use" is:

- (1) *The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission.*
- (2) *The desired use would not adversely affect surrounding property;*
- (3) *The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection;*
- (4) *Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;*
- (5) *The land upon which the proposed use is sought is unsuited for the uses permitted within the district.*

HAWAII COUNTY GROUNDS FOR APPROVAL OF A SPECIAL PERMIT (Planning Department Rule Section 5- 7)

The Planning Commission shall not approve a Special Permit unless it is found that the proposed use:

1. Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be. 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 poor soil conditions within the Project Site for agricultural activities, the Applicant finds that the proposed quarry and stockpile operation is considered an unusual and reasonable use of agricultural land in this location within the State Land Use Agricultural District.

2. Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. 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 within the Project Site are identified as being of the Papai series which

are mostly covered in woodland, with some small areas used for pasture, orchards, and truck crops. The Natural Resources Conservation Service classifies it as a class VIIs Soil, meaning it has very severe limitations for use for cultivation, and is therefore only useful as pastureland, wildlife or woodland. Soils are classified as " E" or Very Poor" soil by the Land Study Bureau' s Overall Master Productivity Rating. The Project Site and surrounding area within this particular section of Hilo has seen a number of industrial-type activities and quarries established over the decades. The very poor agricultural potential of lands within the Project Site and surrounding area has lent itself to supporting a number of various intensive and noxious County- operated waste processing and recreational activities. While soil quality for agricultural purposes is very poor, the Project Site and surrounding lands have become a proven and reliable resource for blue rock that is so essential to the island' s construction industry. Therefore, the issuance of a Special Permit to allow the establishment of a quarry and stockpile operation will not displace any existing agricultural activity or diminish the agricultural potential of the Project Site. 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.

COASTAL ZONE MANAGEMENT

The requested Special Permit, if approved, will not be contrary to Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management. The Project Site is not situated within the Special Management Area, being located at least 2. 9 miles from the nearest shoreline and is not subject to any coastal hazard nor anticipate having any adverse impact upon coastal resources such as coastal recreational and marine resources, coastal ecosystems or the public use and recreational use of any beach.

There is no record of a designated public access that traverses the Project Site. As the site has been extensively altered by past grading and surface quarrying activities, and subsequently invaded by non- native vegetation dominated by a heavily disturbed Albizia forest over a significant portion of the Project Site that has not been left barren by past surface quarrying and grading activities. Given the that the Project Site is absent of any archaeological features due to its intensively disturbed condition, it can also be reasonably concluded that native Hawaiian cultural practices are not being exercised within the Project Site. There are no caves, springs, pu` u, native forest groves or other natural features. Combined with the highly disturbed vegetation that is dominated by invasive, weedy species and secondary growth in most areas, the Project Site does not contain the quality of resources that would be important for native gathering. Based on the FEA' s conclusions, it is not anticipated that the request will have any adverse impact on cultural or historical resources in the area.

Historical industrial-type of uses within the immediate area include landfill and transfer station operations, noisy or potentially dangerous recreational uses, baseyard operations and a number of past and on- going quarry operations makes this particular request in this particular location highly suitable. As the Applicant' s existing quarry is located

immediately adjacent to the Project Site, the transition of existing quarry operations onto the Project Site will be practically seamless from an operational standpoint as well as its effects upon existing public infrastructure and upon surrounding uses. Therefore, this request is supportive of the County' s efforts towards properly managing development.

Finally, in terms of the public participation objective, this is generally a public agency function. This is achieved through the Marine and Coastal Zone Management Advisory Group (MACZMAG) and the public hearing process required pursuant to the Planning Commission' s Rules and County Council' s meetings on this application. Notices of this application will become available through the posting of a sign on the property, as well as sending two (2) notices to surrounding property owners, one at the time the application is filed and again, prior to the public hearing.

In view of the Hawai`i State Supreme Court' s " PASH" and " Ka Pa`a kai 0 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. As the Project Site is located about 2. 9 miles from the shoreline and has been significantly altered in the past, the FEA found that no valued cultural, historic, or natural resources related to traditional and customary practices were identified within the project site, and no traditional and customary native Hawaiian rights are exercised therein. Archaeological and biological surveys conducted by the Applicant and included within the FEA could not identify any such valued resources within the Project Site. For these reasons, the Applicant could find no evidence of any possible significant adverse effects or impairments that will occur to any valued resources should this Special Permit request be approved. Should the Applicant inadvertently encounter any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, the Applicant agrees to cease work in the immediate area and contact the Department of Land and Natural Resources- State Historic Preservation Division (DLNR- HPD), resuming activities only upon securing archaeological clearance from DLNR- HPD when it finds that sufficient mitigation measures have been taken.

LOCATION MAP

