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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on September 21, 2022

Commencing at 9:00 a.m.

Held at

University of Hawaii at Hilo
Campus Center Facility - Room 306
200 West Kawili Street
Hilo, Hawaii 96720

I. **CALL TO ORDER**

II. **ADOPTION OF MINUTES**

September 7, 2022

III. **TENTATIVE MEETING SCHEDULE**

IV. **ADOPTION OF ORDER**

SP22-414 YAMADA & SONS, INC. (HAWAII)

To consider Special Permit application 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 Waiakea, South Hilo, Hawaii, TMK:(3)2-1-013:002 (por.)

V. **ADJOURNMENT**

BEFORE :

1 **APPEARANCES VIA ZOOM:**

2

3 **COMMISSIONERS PRESENT:**

4 Dan Giovanni, Chair

5 Dawn Chang

6 Gary Okuda

7 George Atta

8 Kuikeokalani Kamakea-Ohelo

9 Lee Ohigashi

10 Melvin Kahele

11 Michael Yamane

12 Nancy Cabral (In person at Hilo site)

13

14 **STAFF PRESENT:**

15 Daniel Orodener, Executive Officer

16 Scott Derrickson, Chief Planner (In person at Hilo

17 Riley Hakoda, Staff Planner

18 Martina Segura, Staff Planner

19 Ariana Kwan, Chief Clerk

20 Dan Morris, Esq. Deputy Attorney General

21

22 **PETITIONER:**

23 Daryn Arai

24 Shelbylynn Yamada, President, Yamada & Sons, Inc.

25

1 **APPEARANCES (CONTINUED)**

2

3 **OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:**

4 Bryan Yee, Esq., Deputy Attorney General

5 Aaron Setogawa

6

7 **COUNTY OF HILO, PLANNING DEPARTMENT:**

8 Suzanna Tiapula, Esq., Corporation Counsel

9 Christian Kay, Planner (In person at Hilo site)

10 Jeff Darrow, Diretor (In person at Hilo site)

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1 **CHAIRMAN GIOVANNI:** This meeting is now in
 2 order and on the record, so aloha mai kakou and good
 3 morning to everyone. This is the September 21, 2022
 4 Land Use Commission meeting. This is a hybrid
 5 meeting, which is being physically held at the
 6 University of Hawaii at Hilo, Campus Center
 7 Facility, Room 301, where it is open to the public.
 8 It's also open by interactive conference technology.

9 This technology links the videoconference
 10 participants and other interested individuals of the
 11 public via Zoom. Members of the public can attend
 12 in person or view the meeting via Zoom webinar
 13 platform. Commissioners can also be attending by
 14 Zoom.

15 For all meeting participants, I would like
 16 to stress the importance of speaking slowly,
 17 clearly, directly into your microphone.

18 (Inaudible.)

19 Okay. Recording is back in progress, so
 20 I'll repeat. For all meeting participants, I would
 21 like to stress the importance of you speaking
 22 slowly, clearly, and directly into your microphone.
 23 Before speaking, please state your name and identify
 24 yourself for the record.

25 Also, please be aware that all meeting

1 participants are being recorded on the digital
2 record of this Zoom meeting. Your continued
3 participation is your implied consent to be part of
4 the public record of this event. If you do not wish
5 to be part of the public record, you should exit
6 this meeting now.

7 Zoom conferencing technology allows the
8 parties and each participating commissioner
9 individual remote access to the meeting proceedings
10 via their personal digital devices. Also, please
11 note that due to matters entirely outside of our
12 control, there may be occasional disruptions to
13 connectivity, and this can occur for one or more
14 members of the meeting at any given time. If such
15 disruptions occur, please be patient as we try to
16 restore the audiovisual signals to effectively
17 conduct business.

18 For members of the public wishing to
19 testify during a public witness portion of the
20 meeting and who are accessing this meeting by
21 telephone rather than by smart phone or desktop
22 software, use star 9 to virtually raise your hand
23 and star 9 to virtually lower you hand. You'll also
24 use the star 6 function to mute, a star 6 to unmute.

25 Since I am participating also by Zoom, I

1 will call upon my assistants working as part of the
2 executive office team to help me recognize the star
3 9, star 6 and the raising and lowering of hands.
4 Depending on the length of today's meeting, we will
5 be taking breaks from time to time.

6 My name is Dan Giovanni, and I currently
7 serve as the LUC Chair. We currently have nine
8 seated commissioners, all of which are in
9 attendance. From Maui, we have Commissioner Lee
10 Ohigashi. From Oahu, we have Commissioner Dawn
11 Chang, Commissioner Gary Okuda, Commissioner Kuike
12 Kamakea-Ohelo. From -- who's next here? From
13 Kauai, we have Commissioner Michael Yamane. Also
14 from Oahu, we have Commissioners Melvin Kahele and
15 Commissioner George Atta. And from Hilo and
16 representing us physically in Hilo today, reporting
17 from our meeting location is Nancy Cabral.
18 Commissioner Cabral, welcome.

19 Also attending with Commissioner Cabral in
20 that location in Hilo is LUC Chief Planner, Scott
21 Derrickson. Attending additional staff, LUC Staff
22 Planner Riley Hakoda, LUC Staff Planner Martina
23 Segura, LUC Chief Clerk, Ariana Kwan. LUC Executive
24 Officer will be arriving shortly to the meeting. He
25 is somewhat delayed, and he'll join the meeting in

1 progress. That's LUC Executive Officer Daniel
2 Orodener. And we welcome LUC Attorney General Dan
3 Morris, who's joining us today by Zoom.

4 Our first order of business is the
5 adoption of the minutes from the September 7th, 2022
6 meeting. Ms. Kwan, has there been any written
7 testimony submitted on September --

8 **MS. KWAN:** Not at this time, Chair.

9 **CHAIRMAN GIOVANNI:** I did hear there was
10 one correction about one of the attorneys. What was
11 that correction?

12 **MS. KWAN:** The change was Malia Kakai,
13 attorney for the Windward Planning Commission.

14 **CHAIRMAN GIOVANNI:** Okay. So that would
15 be a slight amendment to the minutes as they were
16 presented. Are there any members of the public who
17 wish to testify on the adoption of the September 7th
18 minutes? If so, please use the raise hand function
19 of the Zoom software or star 9 in accessing this
20 meeting by phone, and you will be promoted to the
21 meeting and given two minutes to testify.

22 Are there any -- do you see, Mr.
23 Derrickson, any members of the public (inaudible)?

24 **MR. DERRICKSON:** No, Chair, there are no
25 members of the public raising their hand or

1 indicating that they want to testify.

2 **CHAIRMAN GIOVANNI:** Thank you. So is
3 there any member that I've indicated on Zoom that
4 they wish to testify, Ms. Kwan?

5 **MS. KWAN:** Not at this time, Chair.

6 **CHAIRMAN GIOVANNI:** Okay. Thank you. So
7 we will proceed.

8 Commissioners, are there any corrections
9 or comments on the minutes? If not, is there a
10 motion to adopt the minutes of September 7th?

11 **UNIDENTIFIED SPEAKER:** (Inaudible.)

12 **CHAIRMAN GIOVANNI:** I'm sorry, I didn't
13 see who that was.

14 **COMMISSIONER ATTA:** Chair, that was
15 Commissioner George Atta that made the motion to
16 approve the minutes.

17 **CHAIRMAN GIOVANNI:** Thank you,
18 Commissioner Atta.

19 To everyone, please state your name before
20 speaking so in case we can't see it in action.

21 Is there a second to the motion?

22 **COMMISSIONER OHIGASHI:** Lee Ohigashi,
23 second.

24 **CHAIRMAN GIOVANNI:** Thank you,
25 Commissioner Ohigashi.

1 Commissioner Atta has moved to adopt the
2 minutes, and Commissioner Ohigashi has moved to
3 second them. Is Mr. Orodenker in attendance at this
4 time?

5 **MR. HAKODA:** Chair, this is Riley.
6 Executive Officer Orodenker hasn't made it yet.

7 **CHAIRMAN GIOVANNI:** Could you repeat that?

8 **MR. HAKODA:** Executive Officer Orodenker
9 hasn't made it to the meeting yet.

10 **CHAIRMAN GIOVANNI:** Okay. So will you be
11 able to poll the commissioners on the motion?

12 **MR. HAKODA:** I will, Chair. Motion to
13 approve the minutes. Commissioner Atta?

14 **COMMISSIONER ATTA:** Aye.

15 **MR. HAKODA:** Commissioner Ohigashi?

16 **COMMISSIONER OHIGASHI:** Aye.

17 **MR. HAKODA:** Commissioner Chang?

18 **COMMISSIONER CHANG:** Aye.

19 **MR. HAKODA:** Commissioner Kahele?

20 **COMMISSIONER KAHELE:** Aye.

21 **MR. HAKODA:** Commissioner Kamakea-Ohelo?

22 **COMMISSIONER KAMAKEA-OHELO:** Aye.

23 **MR. HAKODA:** Commissioner Yamane?

24 **COMMISSIONER YAMANE:** Aye.

25 **MR. HAKODA:** Commissioner Cabral?

1 **COMMISSIONER CABRAL:** I will abstain as I
2 was not personally present for that meeting. Thank
3 you.

4 **MR. HAKODA:** Okay. Thank you.
5 Commissioner Okuda?

6 **COMMISSIONER OKUDA:** This is Gary Okuda.
7 I will also abstain because I was not present at the
8 meeting.

9 **MR. HAKODA:** Thank you. Chair Giovanni?

10 **CHAIRMAN GIOVANNI:** Aye.

11 **MR. HAKODA:** Chair, the motion passes
12 seven-two.

13 **CHAIRMAN GIOVANNI:** Thank you very much.
14 The next agenda item is the tentative
15 meeting schedule. Mr. Okuda or Mr. Orodenker,
16 whoever, please present the schedule.

17 **MR. HAKODA:** Okay. Chair, just FYI, Mr.
18 Orodenker has arrived, but that microphone -- I'll
19 provide the update on the calendar. Next scheduled
20 meeting is for October 5th and 6th, scheduled for
21 Maui. On October 5th, we're hearing Waikapu
22 Property's motion for amendment, and we have
23 tentatively scheduled the site visit on the 6th.
24 Details to follow on the site visit.

25 We are also holding October 19th for a

1 meeting if needed. No meeting scheduled right now
2 for the 20th of October. November calendar has
3 tentative meeting scheduled for November 2nd and 3rd
4 of status updates for U of N Bencorp, docket number
5 A02-737, on November 2nd and holding the 3rd
6 available for other business if needed. On November
7 16th, we have scheduled business on Maui for docket
8 A19-809, Pulama Lanai Miki Basin, and we also have
9 the 17th being held for other business.

10 We will be gone through the month of
11 December. On December 7th, we have island business
12 on the Big Island -- excuse me -- December 7th is
13 for Oahu docket A89-651, Haseko motion, and there's
14 also another docket on December 8th that is in the
15 process -- we're awaiting paperwork to be filed on
16 that and to be scheduled for docket number A81-525
17 Y-O Limited Partnership. And that is the scheduled
18 business for the balance of the year.

19 **CHAIRMAN GIOVANNI:** Thank you, Mr. Hakoda.
20 So are all these meetings that you've identified,
21 are they all in-person meetings or are they hybrid
22 meetings?

23 **MR. HAKODA:** All in person, otherwise --
24 unless otherwise scheduled.

25 **CHAIRMAN GIOVANNI:** Okay. So you'll let

1 us know as that approaches.

2 Commissioners, do you have any questions
3 on the tentative meeting schedule as presented?

4 Seeing none.

5 I have one request. As our next meeting
6 will be held on Maui at a remote location, we intend
7 to work through lunch. I would like to request that
8 the LUC staff arrange for lunch to be provided to
9 the commission to facilitate the meeting.

10 **MR. HAKODA:** Your request is acknowledged,
11 Chair. Thank you.

12 **CHAIRMAN GIOVANNI:** Thank you. Okay. The
13 next agenda item is the adoption of order for SP22-
14 414, Yamada and Sons, Incorporated, Hawaii. This
15 agenda item is to adopt the order for the special
16 permit application to allow the establishment of a
17 quarry operation, related improvements, and
18 activities on a 37.882-acre portion of a larger
19 2,407-acre parcel of land located in the state land
20 use agricultural district within the district of
21 Waiakea, South Hilo, Hawaii.

22 Ms. Kwan, has there been any written
23 testimony submitted on this matter?

24 **MS. KWAN:** No, Chair, not at this time.

25 **CHAIRMAN GIOVANNI:** Thank you. Ms. Kwan

1 and Mr. Derrickson both, taking Mr. Derrickson
2 first, are there any members of the public who wish
3 to testify on this matter?

4 **MR. DERRICKSON:** There are no members --
5 this is Scott Derrickson. There are no members of
6 the public in attendance here at the UH Hilo meeting
7 site.

8 **CHAIRMAN GIOVANNI:** Ms. Kwan, is there
9 anybody there wishing to testify?

10 **MS. KWAN:** I see a hand raised for
11 Suzanna, and her hand just went back down.

12 Suzanna, did you want to testify?

13 **SUZANNA TIAPULA:** Yes, I just wanted to
14 testify -- Suzanna Tiapula, attorney for the
15 Planning Department. I just wanted to state that on
16 the procedural history, we would ask that Malia
17 Kakai not be listed as an attorney for the Planning
18 Department. She represented the Windward Planning
19 Commission. Thank you.

20 **CHAIRMAN GIOVANNI:** Understood and
21 appreciated. Thank you.

22 Commissioners, any questions on that
23 public testimony? Hearing none, we'll now go --
24 thank you. There are no -- I assume there's no one
25 in addition, either on Zoom or in person, wanting to

1 testify on this matter. Is that correct, Ms. Kwan?

2 **MS. KWAN:** That is correct, Chair.

3 **CHAIRMAN GIOVANNI:** Thank you very much.

4 So we'll now enter into deliberations. Before we
5 take up any motion, the Chair would like to confirm
6 for the record that all commissioners and myself are
7 prepared to participate in these proceedings.

8 Commissioner Chang, are you prepared to
9 participate?

10 **COMMISSIONER CHANG:** This is Commissioner
11 Chang. Yes, I am, Chair Giovanni.

12 **CHAIRMAN GIOVANNI:** Thank you.

13 Commissioner Cabral?

14 **COMMISSIONER CABRAL:** I am prepared. I
15 have listened to two-plus hours of tape from the
16 last meeting, and I will participate. And depending
17 on how that proceeds will determine whether I will
18 vote yea, nay, or abstain due to the difficulty of
19 hearing some of the audio information provided from
20 two weeks ago. But I would like to stay and
21 participate. Thank you.

22 **CHAIRMAN GIOVANNI:** Okay. Thank you.

23 Commissioner Okuda?

24 **COMMISSIONER OKUDA:** Mr. Chair, this is
25 Gary Okuda. I would be abstaining, and I will not

1 be participating because I have not reviewed the
2 record. I'd note I was not present.

3 **CHAIRMAN GIOVANNI:** And you were not
4 present, correct. Thank you.

5 Commissioner Ohigashi?

6 **COMMISSIONER OHIGASHI:** Yes, I'll
7 participate.

8 **CHAIRMAN GIOVANNI:** Commissioner Yamane?

9 **COMMISSIONER YAMANE:** Mr. Chair, Mike
10 Yamane. Yes, I'm prepared.

11 **CHAIRMAN GIOVANNI:** Commissioner Atta?

12 **COMMISSIONER ATTA:** Yes, I'm prepared to
13 -- yeah.

14 **CHAIRMAN GIOVANNI:** Thank you.

15 Commissioner Kamakea-Ohelo?

16 **COMMISSIONER KAMAKEA-OHELO:** Yes, Mr.
17 Chair, I'm ready to participate.

18 **CHAIRMAN GIOVANNI:** Thank you.

19 And Commissioner Kahele?

20 **COMMISSIONER KAHELE:** I am.

21 **CHAIRMAN GIOVANNI:** Thank you,
22 commissioner. The Chair is also prepared to
23 participate.

24 The commission will now consider the
25 adoption of the order. Commissioners, before you

1 for your consideration, deliberation, and adoption
 2 are the proposed findings of fact, conclusions of
 3 law, and decision and order prepared by the LUC
 4 staff as they were instructed to do so at the last
 5 meeting on this document.

6 Are there any questions or is there any
 7 discussion? Hearing none, the Chair will now
 8 entertain a motion to approve the form of the order
 9 as amended by the comments to correct that one
 10 position that was put forth. What is your pleasure?

11 Commissioner Chang?

12 **COMMISSIONER CHANG:** This is Commissioner
 13 Chang. Thank you, Chair Giovanni. I move to
 14 approve the proposed order that was -- decision and
 15 order prepared by the LUC staff, subject to two
 16 changes. On page 3, under the procedural history
 17 paragraph 9, specifically clarifying that Malia
 18 Kakai was representing the Windward Planning
 19 Commission.

20 I'm also proposing on page 15 -- this
 21 would be the proposed decision and order number 15.
 22 This is in relationship to the Ohi'a trees, and in
 23 review of the order -- of the proposed order, it
 24 didn't include specifically the comment that I had.

25 So this is my proposed amendment. I would

1 add -- on paragraph 15, it reads, "to protect Ohi'a
 2 trees from rapid Ohi'a death, ROD, on the subject
 3 property," insert "and adjacent to," and then I
 4 would add provision number 5. And any Ohi'a trees
 5 that are not infested and need to be removed, the
 6 wood may be available for cultural use.

7 So that's my two amendments to the
 8 proposed decision and order, but my motion is to
 9 approve it subject to those two changes. Thank you,
 10 Mr. Chair.

11 **CHAIRMAN GIOVANNI:** Thank you,
 12 Commissioner Chang.

13 Do I have a second to the motion by
 14 Commissioner Chang?

15 Commissioner Ohigashi?

16 **COMMISSIONER OHIGASHI:** Before I second
 17 it, should the motion include language authorizing
 18 care to sign on behalf of the commission if approved
 19 and that is it necessary to add that we would use
 20 electronic signature given the -- I'll ask Mr. --
 21 Mr. Chair is on island in Oahu. Is electronic
 22 signature permitted? I'm just curious before I
 23 second it.

24 **CHAIRMAN GIOVANNI:** Mr. Orodener, can you
 25 address the question raised by Commissioner

1 Ohigashi?

2 **MR. ORODENKER:** The authorization for the
3 Chair to sign would add clarification. With regard
4 to the signature, I don't believe that's necessary
5 as we sign system management utilized pretty
6 thoroughly and without issue, but clarification to
7 authorize the Chair to sign the document is helpful.

8 **COMMISSIONER OHIGASHI:** Is it my
9 understanding that Commissioner Chang included that
10 in your original motion?

11 **CHAIRMAN GIOVANNI:** I think it would have
12 to be -- she'd have to state that clearly. She did
13 not state that.

14 So Commissioner Chang, back to you, the
15 movant. Could you clarify about the -- your --
16 Commissioner Chang.

17 **COMMISSIONER CHANG:** Thank you, Mr. Chair.
18 This is Commissioner Chang. Yes, I did -- my
19 intention was to add that third clarification
20 condition that it would be subject to the
21 authorization for the Chair to sign.

22 Thank you, Commissioner Ohigashi, for the
23 reminder.

24 **COMMISSIONER OHIGASHI:** Mr. Chair, I
25 second the motion.

1 **CHAIRMAN GIOVANNI:** Okay. So Commissioner
2 Chang has moved to make a motion, seconded by
3 Commissioner Ohigashi, to approve the form of the
4 order subject to the three minor amendments. Is
5 there any discussion? Seeing none.

6 Mr. Orodenker, please poll the
7 commissioners on the motion.

8 **MR. ORODENKER:** Thank you, Mr. Chair. The
9 motion is to approve or adopt a proposed decision
10 and order subject to two amendments, paragraph 9 to
11 clarify representation by the Windward Planning
12 Commission and page 15, to add the words "and
13 adjacent to" and also add a provision to make wood
14 from Ohi'a trees available for cultural use.
15 There's also a provision to authorize the Chair to
16 sign the decision and order.

17 Commissioner Chang?

18 **COMMISSIONER CHANG:** Aye.

19 **MR. ORODENKER:** Commissioner Ohigashi?

20 **COMMISSIONER OHIGASHI:** Aye.

21 **MR. ORODENKER:** Commissioner Cabral?

22 **COMMISSIONER CABRAL:** Chair, I would like
23 to defer my vote at this moment and vote at the end
24 of this voting process, please.

25 **CHAIRMAN GIOVANNI:** So granted.

1 Please continue, Mr. Orodenger.

2 **MR. ORODENKER:** Commissioner Kahele?
3 Commissioner Kahele?

4 **COMMISSIONER KAHELE:** Aye.

5 **MR. ORODENKER:** Commissioner Yamane?

6 **COMMISSIONER YAMANE:** Aye.

7 **MR. ORODENKER:** Commissioner Kamakea-
8 Ohelo?

9 **COMMISSIONER KAMAKEA-OHELO:** Aye.

10 **MR. ORODENKER:** My apologies.

11 Commissioner Okuda has abstained.

12 Commissioner Atta?

13 **COMMISSIONER ATTA:** Aye.

14 **MR. ORODENKER:** Chair Giovanni?

15 **CHAIRMAN GIOVANNI:** Aye.

16 **MR. ORODENKER:** Thank you, Mr. Chair. The
17 motion passes --

18 **CHAIRMAN GIOVANNI:** One moment. One
19 moment.

20 **MR. ORODENKER:** Commissioner Cabral? I'm
21 sorry.

22 **COMMISSIONER CABRAL:** Thank you. I am in
23 favor of this motion but -- oh, I can talk to my own
24 screen now. I am in favor of this motion, but I'm
25 aware of the property personally. I've been in the

1 area of that property on several occasions, but I --
 2 and I read all of the information and have listened
 3 to the audio -- I mean, the visual and audio tapes
 4 from the last meeting, but due to the poorness of
 5 those tapes, I will abstain from this vote. Thank
 6 you.

7 **MR. ORODENKER:** Thank you, Commissioner
 8 Cabral. Thank you, Mr. Chair.

9 The motion passes with seven affirmative
 10 votes and two abstentions.

11 **CHAIRMAN GIOVANNI:** Thank you. Glad to
 12 see it.

13 This concludes our meeting. Is there any
 14 further business to discuss? If not, I will call
 15 this meeting adjourned. This meeting is adjourned.
 16 Thank you, all.

17 **MS. KWAN:** Shelby -- there's a comment.

18 **CHAIRMAN GIOVANNI:** Where?

19 **MS. KWAN:** She has her hand raised.

20 **CHAIRMAN GIOVANNI:** Okay.

21 **SHELBYLYNN YAMADA:** Hi there. Shelbylynn
 22 Yamada --

23 **CHAIRMAN GIOVANNI:** Ms. Yamada.

24 **SHELBYLYNN YAMADA:** Good morning,
 25 everyone. I just wanted to say thank you, Chair

1 Giovanni and the commission, for your favorable
2 decision. Thank you.

3 **CHAIRMAN GIOVANNI:** We appreciate the
4 feedback.

5 Okay. We are adjourned. Thank you very
6 much, everyone.

7 **(Meeting adjourned at 9:25 a.m.)**

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1 CERTIFICATE

2
3 I, Jodi Dean, do hereby certify that the
4 proceeding named herein was professionally transcribed on
5 the date set forth in the certificate herein; that I
6 transcribed all testimony adduced and other oral
7 proceedings had in the foregoing matter; and that the
8 foregoing transcript pages constitute a full, true, and
9 correct record of such testimony adduced and oral
10 proceeding had and of the whole thereof.

11
12 IN WITNESS HEREOF, I have hereunto set my
13 hand this 5th day of October, 2022.

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18
19 _____
20 Jodi Dean
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