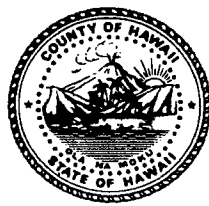


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Mayor



Keith F. Unger, Chair
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Nancy Carr Smith
Scott Church
Perry Kealoha
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County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

SEP - 7 2018

Mr. Sidney M. Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

SUBJECT: Special Permit No. SPP 08-000064
Applicant: Goodfellow Brothers, Inc.
Request: Amendment to Condition No. 3 (Life of Permit) and Addition of
Concrete/Asphalt Batching Plant Use
Tax Map Key: 6-8-001:por. 066

The Leeward Planning Commission, at its duly held public hearing on August 16, 2018, voted to approve the above-referenced request to amend Special Permit No. 08-000064 to amend Condition No. 3 (Life of Permit) and allow the use and operation of a concrete/asphalt batching plant on a 5-acre portion within the previously approved 14.77-acre special permit area on the 243.794-acre property within the State Land Use Agricultural District. The project site is located adjacent to the existing Waikoloa quarry and south of Waikoloa Road, halfway between Waikoloa Village and Queen Ka'ahumanu Highway, Waikoloa, South Kohala, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The baseyard and concrete/asphalt batching plant operations will be limited to this 14.77-acres permitted area, described by metes and bounds description prepared by R. M. Towill on May 23, 2018.
3. The life of this permit for the baseyard facility and the proposed concrete/asphalt batching plant operation shall be for a period coterminous with the life of State Special Permit Docket No. SP92-381, as may be amended from time to time, but in any case no sooner than December 31, 2028.

Hawai'i County is an Equal Opportunity Provider and Employer

SEP - 7 2018

4. Completion of permitted construction of the proposed concrete/asphalt batching plant and related improvements shall be within five (5) years from the effective date of this permit. Prior to construction, the applicants shall secure Final Plan Approval from the Planning Director in accordance with the requirements of the Zoning Code. A Plan Approval may require a drainage plan. Plans shall identify all existing and proposed structures, signage, fire protection measures, driveway access and parking stalls, outdoor lighting (if any, lighting must be shielded with light directed downwards), landscaping buffer and other improvements associated with the proposed development. Best Management Practices (BMPs) shall be implemented.
5. The hours of operation for the baseyard operation and the proposed concrete/asphalt batching plant shall be limited to 6:30 a.m. to 5:30 p.m., seven days a week.
6. All exterior signs shall conform to Chapter 3 Signs of the Hawai'i County Code, relating to signs in the Agricultural district.
7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
8. The wastewater system, noise from construction activities and operation, method of fugitive dust control, and contributing factors to air pollution for the batching plant and related uses shall meet the standards and requirements of the State Department of Health.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
10. In the unlikely event that any surface or subsurface historic properties and/or resources, such as lava tube openings, concentrations of artifacts, structural remains or human skeletal remains are found during construction activities, the applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and immediately contact the State Historic Preservation Division (DLNR-SHPD) at (808) 933-7651 for further guidance.

The applicant shall also notify the Planning Department immediately after contacting the DLNR-SHPD. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

11. The baseyard operation and the proposed concrete/asphalt batching plant establishment shall be conducted in a manner that is substantially representative of plans and details contained within the amendment Application for Special Permit and the representations made before the Leeward Planning Commission.
12. Upon compliance with applicable conditions of approval and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including any impacts to state waters and fire code.
14. To avoid impacts to Hawaiian hawks, do not clear any brush or trees during the March through September breeding season. If unable to avoid clearing vegetation during these months, conduct surveys for nests prior to any clearing activity and contact the U. S. Fish and Wildlife Service for survey methodology and further recommendations to avoid impacting Hawaiian hawk nests.
15. To avoid impacts to Hawaiian hoary bats, woody plants greater than 15 feet tall should not be removed or trimmed from June 1 to September 15.
16. To avoid impacts to existing listed threatened or endangered plant species, please consult with a qualified botanist to determine any existing unknown plant species. If the qualified botanist determines the find to be a listed plant species, please have a qualified botanist conduct surveys for listed plant species within the project area.
17. The subject property is identified as a Formerly Used Defense Site (FUDS) by the U.S. Army Corps of Engineers, who will manage the investigation, clean-up and long-term monitoring on lands formerly used as an artillery firing range. For more information, please contact the Honolulu District Public Affairs, US Army

Corps of Engineers 808-835-4004/4002,
<http://www.poh.usace.army.mil/Missions/Environmental/FUDS.aspx> or
www.poh.usace.army.mil.

18. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:
- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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.

[Note: Ramseyer version available upon request.]

This approval does 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

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Shancy Watanabe of the Planning Department at 961-8144.

Sincerely,



Keith F. Unger, Chairman
Leeward Planning Commission

Mr. Sidney M. Fuke
Planning Consultant
Page 5

LGoodfellowbrothersAmendSPP08-064lpc
Enclosure: PC Findings Report

cc w/enclosures: Goodfellow Brothers, Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
State Land Use Commission
DOT-Highways, Honolulu
GIS Section
Planning Department - Kona

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

GOODFELLOW BROTHERS, INC.

AMENDMENT TO SPECIAL PERMIT NO. 08-000064

Based on the following considerations, an amendment to Special Permit No. 08-000064 to amend Condition No. 3 (Life of the Permit) and add the use and operation of a concrete/asphalt batching plant is approved.

GOODFELLOW BROTHERS, INC. has submitted a request to amend Condition No. 3 (Life of the Permit) of Special Permit No. 08-000064 and add the use and operation of a concrete/asphalt batching plant on a 5-acre portion within the previously approved 14.77-acre Special Permit area on the 243.794-acre property within the State Land Use Agricultural District. In 2008, Special Permit No. 08-000064 granted the establishment of a baseyard to provide equipment and motor vehicle maintenance, repair services and related uses within the 14.77-acre portion of the property. The subject property is located adjacent to the existing Waikoloa Quarry and south of Waikoloa Road, halfway between Waikoloa Village and Queen Ka‘ahumanu Highway, Waikoloa, South Kohala, Hawai‘i, TMK: (3) 6-8-001: portion of 066.

In 2008, Special Permit No. 08-000064 granted the establishment of a baseyard to provide equipment and motor vehicle maintenance, repair services and related uses on the 14.77-acres of land in support of existing quarry operations with the same 243.794-acres property. The applicant is requesting to amend the existing language of Condition No. 3 of Special Permit No. 08-000064 to instead read:

“The life of this permit shall be for a period coterminous with the life of SP 92-391, as may be amended from time to time, but in any case no sooner than December 31, 2028.”

Currently, the language for Condition No. 3 of Special Permit No. 08-000064 states,

“The life of the permit for the baseyard facility shall expire on December 31, 2018, which is when Special Permit No. 833 for the operation of the adjacent Waikoloa Quarry will expire. An amendment to this condition will be required in order for the baseyard to continue beyond that date.”

On February 26, 2016, the Land Use Commission (LUC) granted West Hawai‘i Concrete an extension to the life of their issued State Special Permit Docket No. SP92-381 for the quarry and allowed related activities or uses. Condition No. 12 of the amended State Special Permit Docket No. SP92-381 for the adjacent quarry reads, “*The life of this permit shall be for a period co-terminus with the existing license agreement with the owner of the property, or until December 31, 2043; the date of completion of the proposed quarrying; or its abandonment, whichever comes first.*” As there is a geographical and functional relationship between the operations of the baseyard and quarry, operating on the same property, the applicant is requesting a time extension of its baseyard to run coterminous with the life of the quarry permit or, at the very least, an additional ten (10) years or December 31, 2028. The quarry and the baseyard operations are run by separate businesses. As their operating timetables and objectives may not

coincide, the applicant is requesting flexibility in the condition language regarding the life of the permit. Should the quarrying operation terminate or cease, the applicant could still continue to provide the baseyard operation services to other users.

In addition, the applicant is requesting for the establishment of an asphalt and/or concrete batching plant operation within the existing 14.77-acres baseyard area covered by Special Permit No. 08-000064. According to the applicant, the location of the proposed asphalt and/or concrete batching plant operation would be between the staging area/field office to the north and the equipment storage/lay down area to the south. The plant will consist of a separate control van (office), an approximately 30-foot tall mix surge silo, hot-mix conveyor belt, dust collector, drum mixer, automatic weighing system, cold feed conveyor belt, asphalt pump, asphalt storage tank and cold feed bins. The concept is to use quarried materials from the adjoining site to create asphalt or concrete or both as a mix for roads and other infrastructure. The quarry, baseyard and the concrete and/or asphalt batching plant uses are supportive of infrastructure improvements, such as the Daniel K. Inouye Highway (known as Saddle Road) extension proposed immediately south of the subject site. A benefit of this location is that the quarried materials and the proposed asphalt/concrete batching plant could easily service the construction of the new Saddle Road extension, without negatively affecting the existing Waikoloa Road or other roadways when the time comes. The proposed hours of operation will be similar to the quarry hours, limited to 6:30 am to 5:30 pm, seven days a week. There will be three (3) employees. Upon securing all required permits, the applicant hopes to start construction within six (6) months of the amendment to this Special Permit.

Planning Commission Rule 6-7 provides the criteria for approving a Special Permit, while Rule 6-9 provides the criteria for granting an amendment of permit or conditions for Special Permits. Rule 6-7 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The granting of the proposed request would be consistent with the objectives sought to be accomplished by the Land Use Law and Regulations, and is an unusual and reasonable use of land situated within the State Land Use Agricultural District. In 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, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The proposed amended use is considered unusual since it is not agricultural in nature, but it is a reasonable use as the site is not suited for productive agricultural use. Further, the existing baseyard continues to serve the existing quarry by providing maintenance and repair services for the quarries equipment and vehicles. The proposed operation of a concrete/asphalt batching plant would complement the existing quarry and baseyard uses. Therefore, the proposed request is considered an unusual and reasonable use of the agricultural land.

The granting of this request will promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the state for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i. The property is situated on land characterized as lava flows, 'A'ā (rLV). This is rough, broken lava that has practically no soil covering and is bare of vegetation. In areas of high rainfall, it contributes substantially to the underground water supply and is used for watershed. Soils within the project site are classified as "E" or "Very Poor" for agricultural productivity and as unclassified by the Department of Agriculture's Agricultural Lands of Importance to the State of Hawai'i (ALISH). Two (2) tributaries from the non-perennial Hopeaia Stream traverse the subject property in three (3) separate areas and flows down in the northwest direction away from the existing 14.77-acre Special Permit No. 08-000064 area, which is over 600 feet away to the west from the nearest tributary. Any project and its potential impacts to State waters must meet State and Federal rules and regulations. Conditions of approval will require the applicant to comply with regulations regarding impacts to state waters. According to the applicant, the anticipated uses would occur during the weekdays, when ambient noise from traffic and other sources already permeate the area. There are compatible uses occurring adjacent to the quarry. The applicant would need to meet the requirements of the State Department of Health (DOH) for noise impacts. Conditions of approval will require the applicant to comply with health regulations for noise impacts. Emissions from vehicular and natural sources, such as the volcanic haze from the Kīlauea Volcano, affects the air quality in the subject area. According to the State DOH, the applicant would need to meet the requirements of the DOH Air Pollution Rules, Chapter 60.1, Title 11, State of Hawai'i for the proposed quarry operations. Conditions of approval will require the applicant to comply with health regulations for air impacts.

The proposed use will not displace any existing agricultural activity and does not consist of prime agricultural lands. Thus, the proposed request 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.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5)(A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. Based on the previous discussion listed above, the proposed request is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation and agricultural use of the County's agricultural lands.

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

The existing improvements consists of the two (2) Special Permits issued for the subject 243.794-acre property. Special Permit No. 08-000064 consists of the 14.77-acre area for this amendment request. Special Permit No. 833 consists of an approximately 219.990-acre portion of the subject property for a quarry operation with related improvements. The subject property is in the Formerly Used Defense Sites (FUDS)

Boundary of the former Waikoloa Maneuver Area. The U.S. Army Corps of Engineers will manage any investigations, clean-up and long-term monitoring on lands formerly used as an artillery firing range. For more information, please contact the Honolulu District Public Affairs, US Army Corps of Engineers 808-835-4004/4002, <http://www.poh.usace.army.mil/Missions/Environmental/FUDS.aspx> or www.poh.usace.army.mil. The subject property is in the drier climate of Waikoloa on the existing lava fields, at an elevation of about 700 feet that slopes very gently in the makai (ocean) direction. Electric, telephone and cable overhead lines are along the southern property boundary. In 2016, the landowner received a final inspection for a rock wall entry monument with signage installed on the subject property. To the south is an undeveloped agriculturally-zoned property. Undeveloped lands to the east are zoned Open. To the north of Waikoloa Road, lands are mixed zonings (A-5a, RA-1a and Open) with an existing and unfinished residential project under review. To the west, a permitted heliport and a permitted wastewater treatment plant are within two miles of the subject property.

According to the applicant, access from the fully-improved Waikoloa Road, which provides sufficient off-site parking and reasonably good visibility to and from the site from Waikoloa Road. The batching plant anticipates no more than a maximum of fifteen (15) trips on a real busy day, beginning at 7:30 am and ending at 3:30 pm, averaging about two (2) movements per hour. As such, the applicant sees no need for additional road improvements. As of this writing, the Planning Department received concerns from one constituent, Mark Gordon. The applicant provided a written response to the constituents concern. Based on the above discussions, the proposed uses are not anticipated to have a substantial adverse impact on the surrounding properties. However, any possible impacts can be minimized through conditions of approval.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The proposed request will not burden public agencies to provide additional services. Access to the property is from Waikoloa Road, a two-lane paved County roadway, onto a private quarry access roadway, which has a 24-foot paved width and paved shoulders within a 100-foot right-of-way. Telephone, internet and cable services are available to the site. An existing solar system with supporting backup generator provides electricity to the baseyard. The applicant will obtain necessary permits to expand the existing solar system, as the need arises. Police and Fire services are available in Waikoloa, located about three (3) miles away from the subject property. The Fire Department requires compliance with the Fire code and regulations.

There is an existing water agreement between the applicant and the quarry operator to obtain water from an existing private water line located along the quarry access road. As the project will not require extensive use of the water system, the applicant anticipates nominal usage for potable and some dust control measures. In their June 13, 2018 memo, the Department of Water Supply (DWS) stated that the subject parcel is not within the Department's service limits. The nearest adequate point of connection is from an existing 16-inch waterline within North Kanikū Drive, approximately three (3) miles from the parcel. Further, the water system in the area is privately owned and operated. Therefore, the DWS have no objection to the applicant's request as the subject parcel is not within their existing service limits.

In their June 5, 2018 memo, the State Department of Health (DOH) indicated that the applicant would need to meet the permit requirements of the DOH Air Pollution Rules, Chapter 60.1, Title 11, State of Hawai'i for the proposed quarry operations, and encourages the applicant to contact their Clean Air Branch to discuss those requirements. The DOH recommends that the applicant review all of the Standard Comments on their website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html> and adhere to comments specifically applicable to the proposed project. The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) by Built Environment Working Group (BEWG) of the DOH, and encourages the applicant to apply the healthy built environment principles. In a June 5, 2018 letter, the State DOH stated that the facilities are no longer considered "temporary". The DOH requires a wastewater system that meets their regulations. In a June 22, 2018 letter, the applicant responded that the DOH approved a septic system for the office building. Should the DOH require an upgrade of the septic system, then the applicants will update the existing system in conjunction with the "As-Built" building permit process for the existing structure.

The applicant submitted a Solid Waste Management Plan to the Department of Environmental Management for their review and approval. According to the applicant, the proposed uses will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

In a June 4, 2018 memo, the Department of Public Works (DPW) stated that the subject property is located in Zone "X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawai'i County Code. In a June 22, 2018 letter, the applicant responded that all grading and/or excavation activity will meet the requirements of Chapter 10, Erosion and Sediment Control.

The subject property is in the lava-flow hazard zone three (3), which the U.S. Geological Survey (USGS) designates as areas less hazardous than zone 2 because of greater distance from recently active vents and/or because of topography. One to five percent of zone 3 has been covered since 1800, and 15 to 75 percent has been covered within the past 750 years. Based on the above, the proposed request will not burden public agencies to provide additional services.

(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 the Hawai'i Revised Statutes (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 subject property and surrounding areas are designated for agricultural uses by both State and County land use laws. The proposed request to amend an existing condition and establish the unusual and reasonable use and operation of a concrete/asphalt batching plant on a 5-acre portion within the previously approved Special Permit area on the subject property is in line with the intent for allowing the issuance of a Special Permit.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on land characterized as lava flows, 'A'ā (rLV), classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. Although the soil is suited for uses permitted within the Agricultural district, the applicants were not actively pursuing any agricultural activities in the location of the proposed request. Thus, the proposed uses will not displace any active or potential agricultural activity on the property.

(F) The proposed use will not substantially alter or change the essential character of the land and the present use. According to the applicant, all of the needed improvements with the requested uses already exist on the site. Thus, the approval of this amendment request should not result in the substantial alteration or change in the essential character of the land and the present use. The applicant has no plans to make further improvements to the site. Aside from creating a flat surface, the proposed concrete/asphalt batching plant will not require significant structure improvements. The property itself has been committed to quarrying and baseyard activities, both considered industrial-type uses. The approval of a batch plant on the same property will be a complimentary one that will not detract from, nor conflict with, the current industrial character already established for this property. Therefore, the proposed request will not substantially alter or change the essential character of the land or its present use.

(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 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, and designates the subject property as Urban Expansion. This allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. The approval of the request would support the goals and policies of the Land Use and Economic elements of the General Plan.

Land Use Element

- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- Establish controls to insure orderly development and minimize speculation of commercially zoned lands.

Land Use Element - Industrial

- Industrial activities may be located close to raw materials or key resources.
- Industrial development shall be located in areas adequately served by transportation, utilities, and other essential infrastructure.

Economic Element

- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

The South Kohala Community Development Plan, adopted as Ordinance No. 08 159 by the Hawai'i County Council, identifies the subject property for urban expansion use.

The proposed amendment is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. Under the Coastal Zone Management Program, the County regulates the Special Management Area. Located over three (3) miles from the nearest shoreline, the subject property is outside of the SMA and tsunami evacuation zone. According to the applicant, the proposed amendment will not negatively impact any view planes or scenic resources for existing ocean views from Waikoloa Road. Likewise, the proposed amendment will not negatively impact the existing views of Mauna Kea and Mauna Loa from Waikoloa Road. The Hawai'i County General Plan does not list the subject property as a distinctive and identifiable landmark. According to the applicant, there are no known public access to the mountains or the shoreline that traverses through the property. Therefore, the proposed uses will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Due to the elevation and distance from the ocean, the applicant does not anticipate any coastal hazards or beach erosion to affect the subject property.

No formal floral or faunal study or archaeological study was submitted with this application. The Office of Environmental Quality Control website posted a March 30, 2017 Draft Environmental Impact Statement (EIS) for the Saddle Road Extension that included the subject property. For that project, the U.S. Fish and Wildlife (USFWS) commented that the following listed species have been observed in the vicinity: endangered Hawaiian goose (*Branta sandvicensis*; nēnē), endangered Blackburn's sphinx moth (*Manduca blackburni*; BSM), endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), threatened Hawaiian hawk (*buteo solitarius*), and listed plant species. To avoid and minimize impacts to these species, the USFWS provided their recommendations. The USFWS also cautioned that the project is located on the dry leeward side of West Hawai'i, where wildland fires may affect endangered species and critical habitat. Measures for wildland fire prevention and suppression should be included in project planning. Conditions of approval will require the applicant to address minimizing impacts to endangered species and measures for wildland fire prevention and suppression.

On April 15, 2008, PHRI conducted an Archaeological Assessment Survey for the proposed baseyard site. The report concluded that no archaeological sites were encountered during the survey and recommended that a "no effect" determination be made by the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD). On July 29, 2008, DLNR-SHPD concurred with the survey findings and determined that no historical properties would be affected by the proposed construction baseyard. Based upon archaeological and cultural surveys performed over the last 30 years in and around the area, there is no evidence of traditional and customary Native Hawaiian rights being practiced on the property. The State Historic Preservation Division's (SHPD) List of Designated Historic Places state or national registries does not include the subject property. Conditions of approval will require that language in the unlikely event of discovering historic properties during construction activities meets

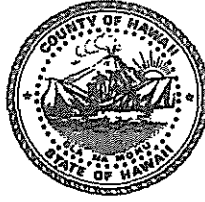
current practices. The Planning Director recommended deleting a portion of the language in Condition No. 2, as the applicant provided the 14.77-acre metes and bounds description prepared by a registered land surveyor. The applicant requested that the language for Condition No. 3 instead read as originally submitted in their application. The applicant reasoned that their original language would allow flexibility in the life of the permit to be a minimum of ten (10) years independent of the life of the permit for the adjacent quarry on the subject property, instead of being exclusively coterminous. As presented before the Planning Commission, this meant that if for any reason, should the quarry operation cease, then the applicant would also have to cease their operation, which was not the intent of the applicant. The Planning Commission considered this and approved the language change for Condition No. 3 to read as originally submitted by the applicant. The applicant also requested clarifying the language in Condition No. 8 by removing the word quarry, as this request is not for the quarry but for the batching plant and related uses. The Planning Commission considered this and approved the condition language correction. The Planning Commission also considered and approved a correction in the language for Condition No. 14 relating to avoiding impacts to Hawaiian hawks.

According to the applicant, there are no known public access to the mountains or the shoreline that traverses through the property.

Therefore, the proposed uses are not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes. The applicants will be required to comply with all agency requirements and stated conditions of approval.

Lastly, this recommendation is made with the understanding that the applicant remains responsible for complying with all other applicable County, State and Federal governmental requirements in connection with the approved use, prior to its commencement and during its operation upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), compliance with State Health Department environmental/sanitation/health-related regulations, drainage plan, among many others. Compliance with all applicable governmental requirements is a condition of this approval, and failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department, Planning Commission and/or the affected agencies.

Based on the above findings, the request to amend Condition No. 3 (Life of the Permit) of Special Permit No. 08-000064 would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations or the original reasons for approving this permit.



County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

October 6, 2008

Ms. Ann M. Cobb
Kalai Consulting
P.O. Box 383597
Waikoloa, HI 96738

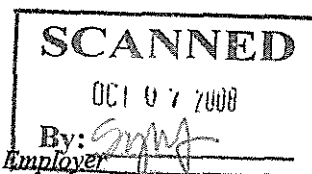
Dear Ms. Cobb:

Special Permit Application (SPP 08-000064)
Applicant: Goodfellow Brothers, Inc.
Request: Construction Baseyard
Tax Map Key: 6-8-1:portion 5

The Planning Commission at its duly held public hearing on September 19, 2008, voted to approve the above-referenced application to allow the establishment of a baseyard to provide equipment and motor vehicle maintenance and repair services and related uses on 14.77 acres of land situated within the State Land Use Agricultural District. The property is located adjacent to the existing Waikoloa Quarry and south of Waikoloa Road, half way between Waikoloa Village and Queen Kaahumanu Highway, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to establish a baseyard to provide equipment and motor vehicle maintenance and repair services for the vehicles and equipment used at the adjacent Waikoloa Quarry and other areas throughout West Hawaii. The baseyard operation would include parts storage and maintenance buildings, general storage and maintenance areas, staging areas (which may include a temporary office trailer), ground-mounted solar panels to provide electricity to the site, a truck scale, and various ancillary uses typically associated with a baseyard. There will be five full time employees. Hours of operation will be from 6:30 a.m. to 5:30 p.m., Monday through Friday. Work may also occur on Saturdays and Sundays.



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The grounds for approving a Special Permit are based on Planning Commission Rule 6-6. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District. The intent of the State Land Use Law for the Agricultural district is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the 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. The proposed use is considered unusual since it is not agricultural in nature, but it is a reasonable use as the site is not suited for productive agricultural use and the baseyard would serve the existing quarry by providing maintenance and repair services for the quarries equipment and vehicles.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The subject property is not located in an area designated as important agricultural lands and has poor quality soil that is not suited for agricultural use. Thus, this request is not contrary to the objectives of HRS, Chapter 205, which seeks to protect lands that have a high potential of being agriculturally productive from inappropriate development.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G).

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. 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 Hawaii. The proposed baseyard will not adversely affect the preservation and agricultural use of the County's prime agricultural lands because the property is not considered important agricultural land and has poor quality soils. In addition, usually industrial uses such as a baseyard would be better suited in an industrially zones area. In this case, the closest major industrially zoned area is over eight miles away, at Kawaihae Harbor. However, the baseyard will serve an existing industrial use (Waikoloa Quarry) on the property and will reduce the amount of truck traffic on area roadways by consolidating the applicants operations next to the source of their raw

materials that are used for construction. Therefore, the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The permit site is located on a 3,049 acre parcel that primarily consists of barren lava fields. The closest residentially zoned area is about three quarters of a mile to the north of the permit site. Currently the closest developed area is a utility baseyard located about two miles to the northeast. In addition, the site is not visible from any surrounding developed areas. Due to the remote location of the proposed use, it is not anticipated that the project will adversely impact 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 site is from the quarry access road, which is a privately owned and maintained paved road within a 100-foot right-of-way. A permit was issued in 1996 by the County Department of Public Works for construction of the quarry access road intersection with Waikoloa Road. The applicant has entered into an agreement with the quarry operator to provide private water to the permit site. Wastewater will be disposed of into an individual wastewater system meeting the requirements of the Department of Health. All other public services and utilities are available to the project site. Based on the above, the requested use will not burden public agencies to provide additional services and the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may and have been established. As the use of Waikoloa Quarry has increased, so has the need for maintenance and repair work on the equipment used at the quarry. The establishment of a baseyard would allow the applicant to consolidate its services next to the adjacent quarry, which is its primary area of operation.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils on the property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and are unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Additionally, the U.S.D.A. Soil Survey Report identifies the soil type as Aa Lava (rLV), which is rough broken lava with almost no soil or vegetative cover. Based on the poor soil conditions of the land upon which the proposed use is sought, the applicant has met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The essential character of the surrounding area is barren lava

fields. The permit site is located adjacent to an existing quarry within an undeveloped 3,049-acre parcel and is located over 1,000 feet from the nearest property boundary. Therefore, the proposed use will not alter or 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 is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is located in an area identified as Urban Expansion in the General Plan, which allows for industrial designations of land where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. The proposed use is consistent with the General Plan LUPAG Map, and supports the following goals and policies of the Land Use and Economic elements of the General Plan:

Land Use Element: Industrial

- Industrial activities may be located close to raw materials or key resources.
- Industrial development shall be located in areas adequately served by transportation, utilities, and other essential infrastructure.

Economic Element

- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

The proposed request will strengthen the operation of the existing quarry by providing maintenance and repair services for the quarry vehicles and equipment in close proximity to the quarry. The site is appropriate for the proposed industrial use because the County will not be burdened to provide essential infrastructure to the site. Access to the site is via an existing private road, water is available through an agreement between the applicant and the quarry operator, and electricity will be generated through the use of solar energy. Based upon this information, the applicant's request is consistent with the goals and objectives of the General Plan.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The property is located over three miles from the nearest shoreline and therefore will not likely be affected by coastal hazards and beach erosion or negatively affect coastal ecosystems, marine resources,

public access to the shoreline, and shoreline recreational resources. Professional surveys conducted of the site determined that the proposed baseyard will have no effect on historic, floral or faunal resources. The applicant has stated that there is no public access to the mountains that traverses the property and no view planes or scenic resources that will be impacted by the project. Thus, the proposed request is consistent with the objectives of HRS, Chapter 205A.

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 in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: An archaeological assessment survey dated May 2008, by Paul H. Rosendahl, Ph.D., Inc., was submitted with the application. Additionally, a botanical assessment and re-survey report dated May 1992 was prepared by Char & Associates.

The valuable cultural, historical, and natural resources found in the permit area: The botanical assessments did not identify any floral or faunal resources that are customarily gathered by Native Hawaiians. The archaeological assessment survey found no archaeological resources within the project area. Additionally, a comment letter from the DLNR-SHPD dated July 29, 2008 concurred with the survey findings. According to the applicant, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources on the site.

Possible adverse effect or impairment of valued resources: Previous fauna surveys identified the native Short-eared Owl or Pueo; however the Pueo is a relatively common bird on the island and will not likely be affected by the proposed baseyard. The property does not abut the shoreline; therefore Hawaiian fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: Conditions of approval will be included to require the applicants to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD. 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.

Based on the above, the approval of the request to establish a baseyard would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions:

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall submit metes and bounds description of the 14.77-acre permit area by a registered surveyor prior to the receipt of Final Plan Approval. The baseyard operations will be limited to this permitted area.
3. The life of the permit for the baseyard facility shall expire on December 31, 2018, which is when Special Permit No. 833 for the operation of the adjacent Waikoloa Quarry will expire. An amendment to this condition will be required in order for the baseyard use to continue beyond that date.
4. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code.
5. The hours of operation shall be limited to 6:30 a.m. to 5:30 p.m., seven days a week.
6. All exterior signs shall conform to Section 3-12 of the Sign Code, Chapter 3 of the Hawaii County Code, relating to signs in the Agricultural district.
7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
8. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. The baseyard operations shall be conducted in substantial conformance with representations made in the application and to the Planning Commission.

12. Upon compliance with applicable conditions of approval and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. An initial extension of time for the performance of conditions may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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.

This approval does 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.

Ms. Ann M. Cobb

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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

Lgoodfellowbrothers01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu