

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of)	DOCKET NO. SP06-400
)	
WILLIAM HORNEMAN ON BEHALF OF)	DECISION AND ORDER
HAWAIIAN CEMENT)	APPROVING SPECIAL USE
)	PERMIT
To Operate And Expand A Quarry And Base)	
Course Operation On Approximately 79.2)	
Acres Of Land Within The State Land Use)	
Agricultural District At Mā`alaea, Maui,)	
Hawai`i, Tax Map Key: 3-6-04: 7)	
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STATE OF HAWAII
2006 DEC -4 P 4:48

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DECISION AND ORDER APPROVING SPECIAL USE PERMIT

On January 17, 2006, William Horneman on behalf of Hawaiian Cement ("Applicant") filed a Special Use Permit Application ("Application") with the County of Maui Department of Planning ("DP"), pursuant to section 205-6, Hawai`i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai`i Administrative Rules ("HAR"). The Applicant proposes to operate and expand the existing 14.8-acre Pohakea Quarry and base course operation¹ by an additional approximately 64.4 acres of land within the State Land Use Agricultural District at Mā`alaea, Maui, Hawai`i, identified as Tax Map Key: 3-6-04: 7 ("Property").²

¹ On May 27, 1997, the County of Maui Planning Commission ("Planning Commission") approved the establishment of the quarry under County of Maui I.D. No. SUP2 96/0013. In addition to quarrying and base course production, the permit allowed the composting of greenwaste and grubbed material and the recycling of concrete rubble on the site.

² The Application covers the entire approximately 79.2 acres of land comprised by the Property.

On July 25, 2006, the Planning Commission conducted a hearing on the Application, pursuant to a public notice published in the Maui News on June 23, 2006. At the hearing, there were two individuals who presented oral testimony in support of the Application. After due deliberation, the Planning Commission recommended approval of the Application to the Land Use Commission ("LUC"), subject to seven conditions.

On September 1, 11, and 26, 2006, the LUC received a copy of the Planning Commission's decision on the Application and a portion of the record. On October 20, 2006, the LUC received the remaining portion of the Planning Commission's record on the Application.

The LUC has jurisdiction over the Application. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, confer jurisdiction upon the LUC to approve special use permits for areas greater than 15 acres where application for LUC approval is made within 60 days after the decision is rendered on the application by the Planning Commission.

On November 16, 2006, the LUC met in Makena, Maui, Hawai'i, to consider the Application. William Horneman, Karlynn Kawahara, Dave Gomes, and Kirk Tanaka appeared on behalf of the Applicant. Jane E. Lovell, Esq., Michael W. Foley, and Colleen Suyama appeared on behalf of the DP. Bryan C. Yee, Esq., and Abe Mitsuda were also present on behalf of the State Office of Planning ("OP").

At the meeting, Commissioner Piltz disclosed that he served on the Planning Commission when the Applicant originally applied to establish the existing quarry. Chair Judge also disclosed that she worked in the DP at the time the matter first came before the County of Maui for its special use permit. There were no objections by the parties to Commissioner Piltz's or Chair Judge's participation in this proceeding. The DP was then asked to present its recommendations to the LUC. The DP stated that it supported the Application and affirmed that the Applicant had presented compliance documents to the satisfaction of the DP with respect to the County permits. The DP further noted that the Applicant had agreed to comply with all of the conditions of approval recommended by the Planning Commission in this matter. Upon questioning by the LUC, the DP stated, among other things, that the Planning Commission did not recommend any specific condition requiring that Pohakea Stream be preserved or that the Applicant locate its quarrying operations a set distance from the stream. The DP also stated that under the original special use permit that established the existing quarry, there was no condition addressing revegetation or restoration, but that as part of the County special use permit in this matter, the Planning Commission did impose a condition requiring the preparation of a closure plan to revegetate the site once the quarrying operation ceased. In response to further questioning, the DP clarified that the Planning Commission recommended the same expiration date in this matter as imposed in the Applicant's existing County permits for administrative ease. Following further discussion, the LUC incorporated, without any objection from the parties, the document

entitled *Revised Maui Planning Department's Recommendation to the Maui Planning Commission, July 25, 2006 Meeting* into the record in this matter to reflect the conditions recommended by the Planning Commission at the meeting. The Applicant then provided a background of the existing quarry and base course operations and the proposed expansion area. Upon questioning by the LUC, the Applicant noted that it was going to ask for a 10-year operating timeframe in light of the projected amount of rock material on the Property. Upon further questioning by the LUC, the Applicant represented that on the Wailuku side of Pohakea Stream, it will have a 25-foot buffer between the stream and the quarrying operation, and that it will maintain the area from the stream to the southern Mā`alaea side border of the Property in its natural vegetative state. Following discussion, the Commission expressed concern that the responsibility to prepare a closure plan to revegetate the Property following cessation of the quarry operations should rest with both the Applicant and the landowner of the Property.

The OP stated that it had no objection to the Application.

The LUC staff then provided a report that identified several issues relating to the existing Pohakea Quarry and proposed expansion that required clarification, and that further recommended amendments and additions to the conditions of approval recommended by the Planning Commission as reflected in the minutes of the meeting. In response to the staff report, the Applicant stated that (i) it submitted to the DP a compliance report documenting the Applicant's compliance with the conditions of approval imposed in its special use permit (SUP2 96/0013) which originally established

the Pohakea Quarry on 14.8 acres of the Property, and that the DP approved the report; (ii) the Applicant was working with the landowners of the proposed Mā`alaea Mauka Residential Subdivision located to the immediate south of the Property to address potential impacts from the quarry operation; (iii) its lease agreement with the owner of the Property expires in 2024; (iv) the County of Maui ordinances do not require approval of a grading permit for a mining operation, and therefore proposed Condition Number 20 should be amended accordingly; and (v) it was difficult to determine when the Applicant would commence quarrying operations in the expansion area as this is dependent upon approval of the Applicant's archaeological inventory survey by the Department of Land and Natural Resources, State Historic Preservation Division ("DLNR, SHPD"), and the submission of a monitoring plan and, if necessary, an updated preservation plan.

Following discussion by the Commissioners, a motion was made and seconded to amend Condition Number 1 to extend the life of the Special Use Permit to 10 years on top of 2009. Upon further discussion, a second motion was made and seconded to amend proposed Condition Numbers 14 and 17 to require that the Applicant maintain the area between Pohakea Stream and the southern boundary of the Property for the life of the quarry to provide a visual buffer and to require that the Applicant maintain a 25-foot buffer along the northern boundary of Pohakea Stream, respectively. Following discussion, a third motion was made and seconded to modify proposed Condition Number 20 to delete references to grading plans and grading

permits. Upon further discussion, a fourth motion was made and seconded to modify proposed Condition Number 12 to require that both the Applicant and the owner of the Property shall prepare a closure plan for the quarry. Following further discussion, a fifth motion was made and seconded to clarify the first motion that Condition Number 1 be amended to extend the life of the Special Use Permit to December 15, 2016.

The LUC found that (i) the continued operation and expansion of the Pohakea Quarry will ensure that the construction industry on Maui is provided with an economical source of base course as well as recycle concrete rubble and greenwaste to reduce the amount of waste material that is sent to the Central Maui Landfill; (ii) there are no known significant habitats or wetlands or rare, endangered, or threatened species of flora or fauna located on the Property; (iii) the surrounding area presently consists of vacant agricultural lands; the nearest urban area is the Mā`alaea community located approximately 1.4 miles to the south of the Property; (iv) wastewater service is currently provided by an existing individual wastewater system that consists of septic tanks and a leaching field; no additional wastewater capacity is anticipated with the proposed expansion; (v) the quarry is currently served by a private waste disposal company; no significant change in solid waste disposal requirements is anticipated with the proposed expansion; (vi) water for plant operations and fire flow protection is presently available; no changes to plant operations or water usage is expected with the proposed expansion; (vii) there are existing drainage facilities that serve the existing quarry site; retention ponds will be constructed to retain the anticipated increase in

runoff volume associated with the proposed expansion; (viii) there are no plans to increase the current operation schedule or to increase manpower requirements, and there are no additional quarry customers expected; the proposed expansion is not anticipated to increase traffic in the area; (ix) the use is necessary to provide base course material for Maui's construction industry as well as serve as a recycling area for concrete and greenwaste; and (x) the Property generally consists of rocky land which makes it better suited for a rock quarry operation than for agricultural uses; the Land Study Bureau overall (master) productivity rating class of the Property is "E," which is the lowest productivity rating for agriculture.

Following deliberation by the Commissioners, a vote was taken on each motion relative to the proposed amendments to Condition Numbers 1, 12, 14, 17, and 20. There being a vote tally of 8 ayes and 1 absent for each motion, the motions carried. Thereafter, a vote was taken to approve the Special Use Permit, subject to the conditions as recommended by the Planning Commission, the LUC staff, and as amended herein by the LUC. There being a vote tally of 8 ayes and 1 absent, the motion carried.

ORDER

Having duly considered the complete record of the Planning Commission's proceedings on the Special Use Permit and the oral arguments presented by the parties in this proceeding, and two motions having been made at a meeting conducted on November 16, 2006, in Makena, Maui, Hawai'i, and the motions having received the affirmative votes required by section 15-15-13, HAR, and there being good

cause for the motions, the LUC hereby APPROVES the Special Use Permit granted by the Planning Commission to operate and expand the Pohakea Quarry and base course operation on approximately 79.2 acres of land within the State Land Use Agricultural District at Mā`alaea, Maui, Hawai`i, identified as Tax Map Key: 3-6-04: 7, and approximately identified on Exhibit "A," attached hereto and incorporated by reference herein, subject to the following conditions:

1. That the LUC Special Use Permit shall be valid until December 15, 2016, subject to further extensions by the LUC upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the LUC and may require a public hearing on the time extension.

2. That the conditions of this State Special Use Permit shall be enforced pursuant to sections 205-12 and 205-13, HRS. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty days to cure the violation. If the permit holder fails to cure the violation within sixty days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000 per violation; that a civil fine not to exceed

\$5,000 shall be issued if violation not cured within six months of the issuance of the order. The order shall become final thirty days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the DP within said thirty days. Upon receipt of a request for a hearing, the DP shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the planning director or the director's designee in accordance with the provisions of chapter 91, HRS, as amended.

3. That the subject LUC Special Use Permit shall not be transferred without the prior written approval of the LUC. The appropriate Planning Commission shall make a recommendation to the LUC. However, in the event that a contested case hearing preceded issuance of said LUC Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

4. That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject LUC Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this LUC Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui and State of Hawai'i as an additional named insured, insuring and defending the applicant, County of Maui

and State of Hawai'i against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the DP within ninety (90) calendar days from the date of transmittal of the decision and order.

5. That full compliance with all applicable governmental requirements shall be rendered.

6. That the Applicant shall submit to the LUC and the DP copies of a detailed report addressing its compliance with the conditions established with the subject LUC Special Use Permit. The compliance report shall be reviewed and approved by the LUC and the DP prior to the establishment of the Special Use within the expansion area.

7. That the Applicant shall develop the Property in substantial compliance with the representations made to the LUC in obtaining the Special Use Permit. Failure to so develop the property may result in the revocation of the permit.

8. That the Applicant shall comply with the following recommendations of the State Department of Transportation ("DOT"):

- a. The Applicant shall develop a maintenance plan to regularly remove dirt, debris, gravel, and other by-products of quarry operations from the quarry access road's intersection with Honoapi'ilani Highway. The Applicant shall also develop a plan for rapid removal of any quarry products spilled on the State highway right-of-way. Both plans shall be reviewed and approved by the DOT;
- b. No increase in storm water runoff will be allowed onto the State highway right-of-way. Plans for the construction and maintenance of retention basins shall be submitted to the DOT for review and approval; and
- c. Plans for work within the State highway right-of-way shall be reviewed and approved by the Highways Division, Maui District.

9. That in the event any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the DLNR, SHPD, shall be contacted.

10. That prior to initiation of any excavation work within the 64.4-acre expansion, the following shall be resolved with the DLNR, SHPD:

- a. Clarification in the form of archaeological inventory survey level documentation as to whether Temporary Site T-9 is a previously identified historic site;
- b. A preservation plan for the "agreed upon preservation areas"; and
- c. A thorough field inspection of the 65+ acres into which the proposed quarry will expand to determine the condition of the previously identified sites as well as documentation of any additional sites. Documentation from the DLNR, SHPD, that all concerns have been addressed shall be filed with the

DP and the County Department of Public Works and Environmental Management ("DPWEM") prior to issuance of any grading permit, if required, and initiation of excavation work within the expansion area.

11. That the Applicant shall have an onsite monitor to ensure that the load is covered and material is removed from the exterior of the truck bed and wheels to reduce debris falling onto the public roadways.

12. That upon cessation of the Pohakea Quarry operations the Applicant including the owner of the land shall prepare a closure plan to revegetate the site or other measures to reduce erosion. The closure plan shall be reviewed and approved by the DP.

13. That the Applicant shall incorporate applicable Best Management Practices ("BMP") to mitigate noise, dust, runoff, and infiltration related to the Pohakea Quarry.

14. That the Applicant shall maintain the area between the Pohakea Stream and the southern boundary of the Property for the life of the Pohakea Quarry to provide a visual buffer.

15. That base course materials from the Pohakea Quarry shall not be exported off island.

16. That the protective construction fencing located around Site T-9 (a remnant of an historic wall) shall be maintained for the life of the LUC Special Use

Permit. All individuals and/or organizations working on the site shall be briefed on the location of Site T-9 to avoid damaging this site.

17. That the Applicant will maintain a 25-foot buffer along the northern boundary of the Pohakea Stream. That the bed or banks of Pohakea Stream shall not be altered without an approved stream-channel alteration permit prior to construction.

18. That the Applicant shall obtain a National Pollutant Discharge Elimination System permit for the expansion of the Pohakea Quarry.

19. That the Applicant shall maintain its existing State Department of Health air quality permits throughout the operation of the Pohakea Quarry and shall obtain any additional air quality permits that may be required for the quarry expansion.

20. That the Applicant shall submit a detailed and final drainage report and a BMP Plan to the DPWEM for its review and approval.

21. That the Applicant shall operate the Pohakea Quarry from Monday through Saturday, 7:00 a.m. to 5:00 p.m.

22. That the Applicant shall file a request with the DP to terminate SUP2 96/0013 within six months following the issuance of this Decision and Order.

23. That the permitted uses and activities on the existing 14.8-acre site shall be limited to quarrying, base course production, recycling of concrete debris,

greenwaste composting, screening of compost material, maintenance and storage facilities to support the onsite rock crusher, and office facilities for the operation. Permitted uses and activities on the approximately 64.4-acre expansion area shall be limited to quarrying and base course production only. There shall be no composting of greenwaste and grubbed material or the recycling of concrete rubble on the expansion area.

ADOPTION OF ORDER

The undersigned Chairperson, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 4th day of December, 2006. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 4th day of December, 2006, per motion on November 16, 2006.

APPROVED AS TO FORM:

Wanda Dickson
Deputy Attorney General

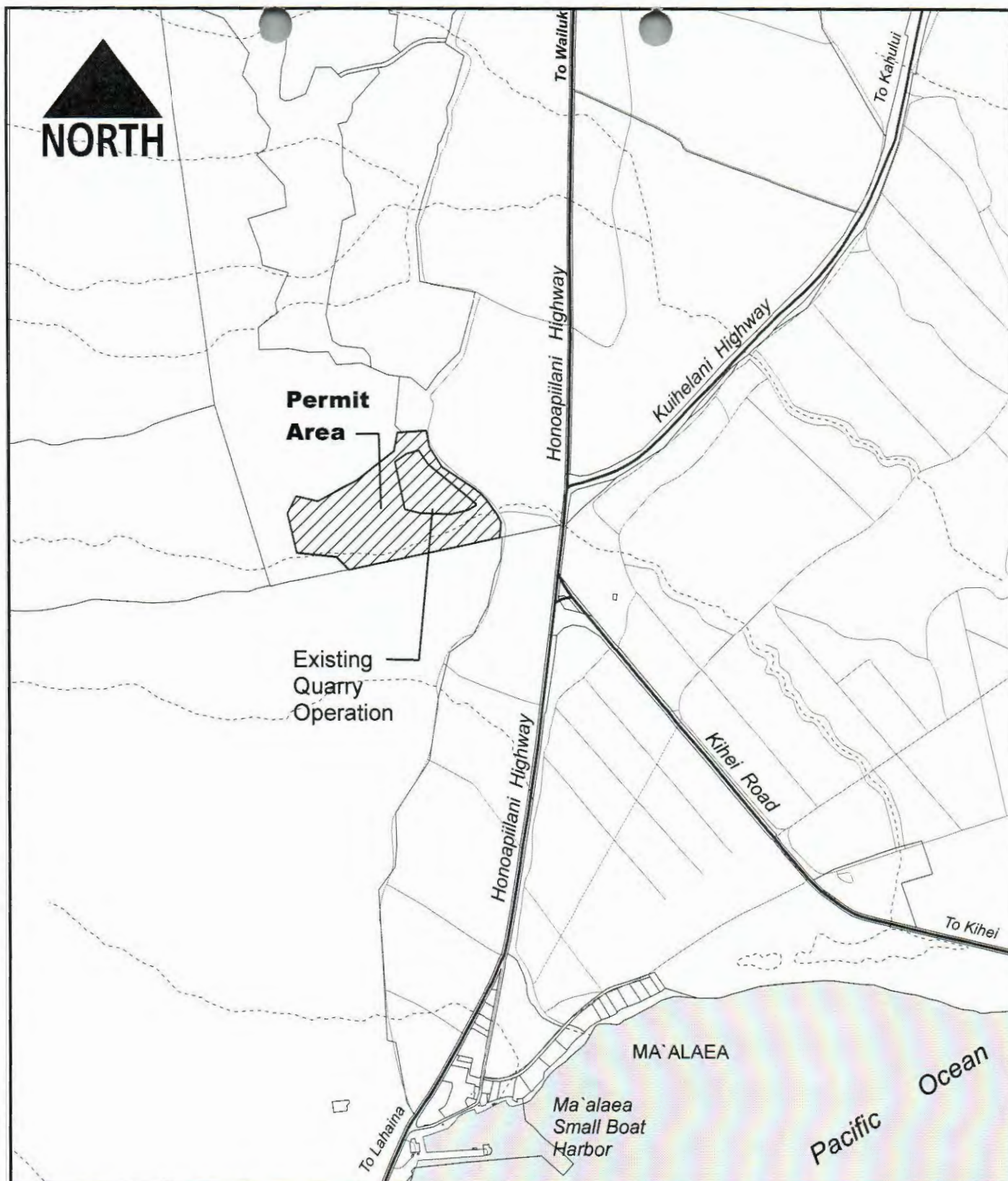
LAND USE COMMISSION
STATE OF HAWAII

By Lisa Judge
LISA JUDGE
Chairperson and Commissioner

Filed and effective on
December 4, 2006

Certified by:

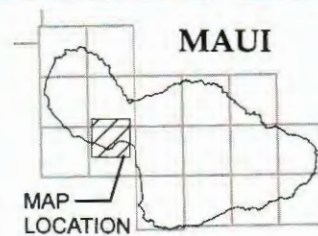
Anthony J. H. Ching
ANTHONY J. H. CHING, Executive Officer



SP06-400 WILLIAM HORNEMAN
ON BEHALF OF HAWAIIAN CEMENT

LOCATION MAP
Tax Map Key: 3-6-04: 7
Ma'alaea, Maui, Hawai'i
Scale: 1" = 2,000 feet

EXHIBIT "A"



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the DECISION AND ORDER APPROVING SPECIAL USE PERMIT was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular mail as noted:

VIA HAND-DELIVER AND EMAIL

Laura Thielen, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

VIA REGULAR MAIL AND EMAIL

William Horneman, on behalf of Hawaiian Cement
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VIA REGULAR MAIL AND EMAIL

Michael Foley, Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 4th day of December, 2006.



ANTHONY J. H. CHING
Executive Officer