

SP 78-319 YAMADA & SONS, INC.



SP 78-319 YAMADA AND SONS, INC.

20° 00'
155° 37' 30"
460 000 FEET
VAOHAE
Mapped, edited, and published by the Geological Survey
Control by USGS and USC&GS
Topography from aerial photographs by photogrammetric methods
Aerial photographs taken 1954 Advance field check 1957
Hydrography compiled from USC&GS chart 4162 (1950)
Polyconic projection. Old Hawaiian datum
10,000-foot grid based on Hawaiian coordinate system, zone 1
1000-meter Universal Transverse Mercator grid ticks,
zone 5, shown in blue
Unchecked elevations are shown in brown

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER 25, COLORADO OR WASHINGTON 25, D. C.

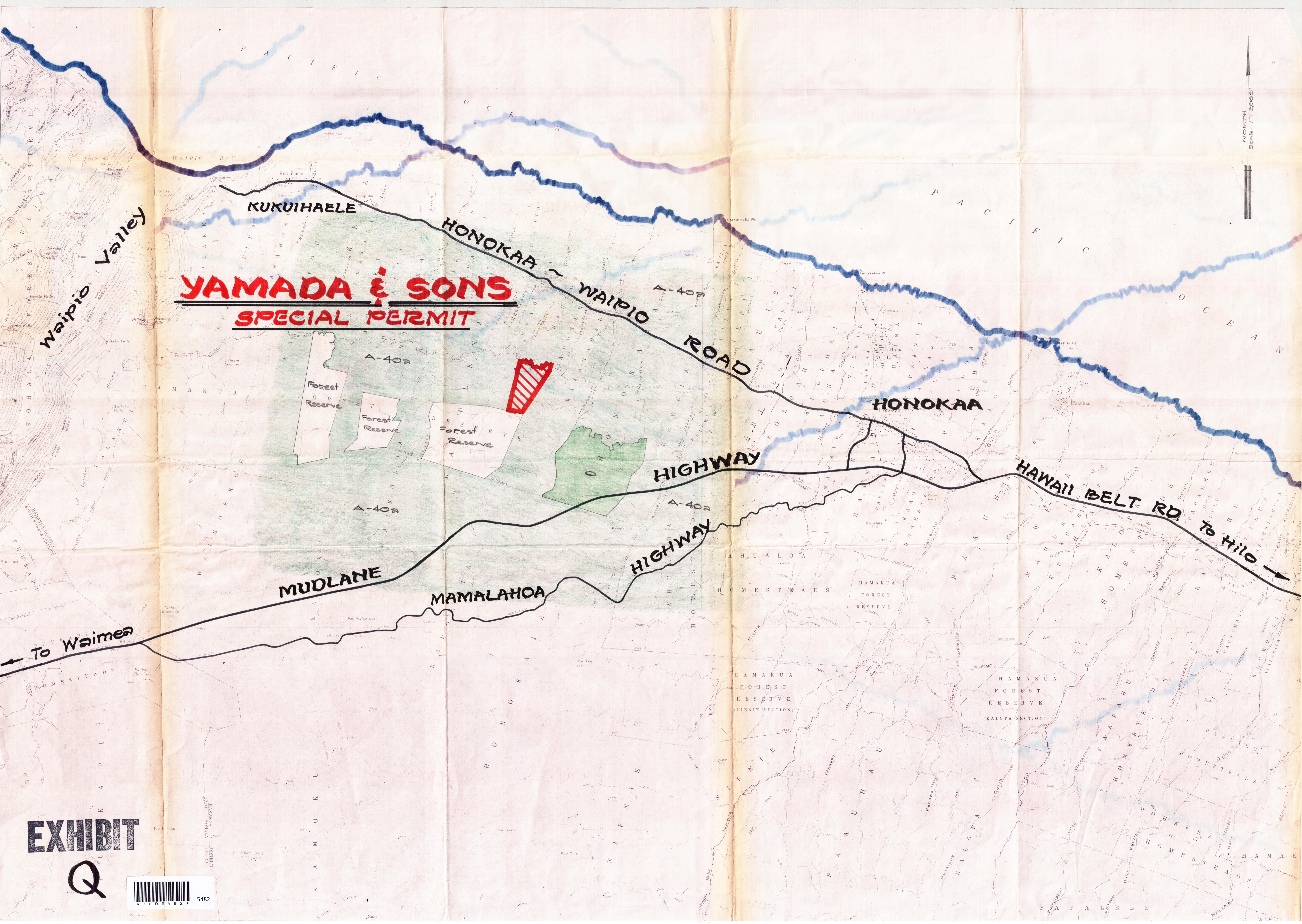
ROAD CLASSIFICATION

Light-duty

Unimproved dirt

State Route

4-34 KUKUIHAELE, HAWAII
E/2 WAIPIO 15' QUADRANGLE
N2000—W15530/9 X 7.5



COPY

PLANNING DEPARTMENT
25 AUPUNI STREET

COUNTY OF HAWAII
HILO, HAWAII 96720

CERTIFIED MAIL

SEP 16 9:20 AM '81
September 19, 1981
LAND USE COMMISSION
STATE OF HAWAII

Yamada & Sons, Inc.
733 Kanoelehua Avenue
Hilo, HI 96720

Gentlemen:

Special Permit 78-319 (LUC No. 401)
TMK: 4-7-06:1

This is to notify you that your Special Permit 78-319, granted by the State Land Use Commission on October 19, 1978, has been nullified based on Condition No. 3 which states the following:

"That the Special Permit, without further action by the County Planning Commission and State Land Use Commission, shall be automatically nullified upon the completion of the Honokaa to Waipio State road improvement project (State Project No. 240 A-01-71). The petitioner shall be responsible for notifying the Planning Director of the termination of the project. The Planning Director shall in turn notify the County Planning Commission and the State Land Use Commission of the project termination."

According to the State Highways Division, the Honokaa-Waipio Road project was completed in February 1979.

Should you have any questions, please feel free to contact this department.

Sincerely,

Sidney Fuk
SIDNEY FUK
Planning Director

AK:jrh

cc: Terence T. Yoshioka
✓State Land Use Commission
Planning Commission



DEPARTMENT OF PLANNING
AND ECONOMIC DEVELOPMENT

LAND USE COMMISSION

Suite 1795, Pacific Trade Center, 190 S. King Street, Honolulu, Hawaii 96813

GEORGE R. ARIYOSHI
Governor

CHARLES W. DUKE
Chairman

SHINICHI NAKAGAWA
Vice Chairman

COMMISSION MEMBERS:

James Carras
Colette Machado
Shinsel Miyasato
Mitsuo Oura
George Pascua
Carol Whitesell
Edward Yanai

GORDAN FURUTANI
Executive Officer

Mr. Sidney Fuke
Planning Director
Hawaii Planning Department
25 Aupuni Street
Hilo, Hawaii 96720

Dear Mr. Fuke:

Subject: SP78-319 - YAMADA AND SONS, INC.

In reference to our letter to you dated
October 20, 1978, enclosed is a copy of the
Decision and Order on SP78-319 for your information
and records.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

Encl.

cc: Terence T. Yoshioka
Yamada and Sons, Inc.

BEFORE THE LAND USE COMMISSION

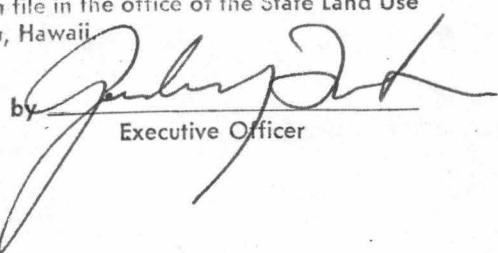
OF THE STATE OF HAWAII

In the Matter of the) SP78-319
Petition for Special Permit)
of YAMADA AND SONS, INC.) YAMADA AND SONS, INC.
)

This is to certify that this is a true and correct copy of the
Decision and Order on file in the office of the State Land Use
Commission, Honolulu, Hawaii.

APR 20 1979

Date

by 
Executive Officer

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the) SP78-319
Petition for Special Permit)
of YAMADA AND SONS, INC.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW AND
) DECISION AND ORDER

The Land Use Commission of the State of Hawaii,
having duly considered the entire record in the above entitled
matter, makes the following findings of fact and conclusions
of law.

FINDINGS OF FACT

1. The Petition for Special Permit was filed by YAMADA AND SONS, INC., to allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakua, Hawaii, Tax Map Key 4-7-06: portion of 1.

2. The subject property is situated between Kawaikalia and Kapulena gulches, approximately 5,000 feet south of the Honokaa-Waipio Road at Kapulena.

3. The subject property is the site of a quarrying operation run by Honokaa Sugar Co. The proposed rock crusher would be utilized in conjunction with the quarry.

4. The subject site is Zoned Agricultural-40 acres (A-40a).

5. Surrounding land uses include sugar and macadamia nut cultivation. The closest dwelling is located nearly one-half mile north of the subject site.

6. Access to the site is provided via a plantation road which has a pavement width of 20 feet.

7. The quarrying operation run by Honokaa Sugar Company had been in operation prior to establishment of the State Land Use Law, and continues to exist as a nonconforming use.

8. The Petitioner will utilize the rock crusher in constructing a State highway from Honokaa to Waipio. The Petitioner is under contract with the State of Hawaii through State Project No. 240 A-01-71.

9. The Petitioner has stated that the introduction of the rock crusher at the existing quarry site will have little impact upon surrounding properties and will aid in the provision of public services and facilities.

10. The State Department of Health has cited applicable health regulations to which the Petitioner must comply.

11. The County Department of Public Works, Fire Department, Police Department, and Department of Water Supply had no objections to the application for Special Permit.

12. The State Department of Transportation has recommended approval of the application, citing the benefit to the public from the completion of the road project.

13. The County Planning Department has recommended approval of the Special Permit request.

14. The Hawaii County Planning Commission conducted a public hearing on the application for Special Permit on August 3, 1978. At that time, two (2) representatives of the Petitioner spoke in support of the request. Two (2) persons spoke in opposition to the granting of the Special Permit, citing the lack of need for a rock crushing operation in the area.

CONCLUSIONS OF LAW

1. "Unusual and reasonable" uses other than those which are permitted in an Agricultural District may be permitted by Special Permit pursuant to HRS Chapter 205-6, and the State Land Use Commission District Regulation, Part V.

2. The approval of the subject request will be consistent with the State 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 these lands are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The area under consideration is classified as Agricultural by the State Land Use Commission. The Agricultural District includes lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural activities by reasons of topography, soil and other related characteristics. The subject area has been put to quarrying use by the Honokaa Sugar Company for quite some time as part of their overall agricultural operations. Due to the continuing quarrying use of the property, the site does not lend itself to the cultivation of crops. By allowing a crusher operation to be established by YAMADA AND SONS, INC., to provide materials for the Honokaa-Waipio Road project, no further detraction from the agricultural use of the property will be encouraged. Further, the establishment of a crusher will not have any adverse effect on the overall agricultural potential of the region.

3. The establishment of the proposed use will not adversely affect surrounding properties. As mentioned previously, the site is currently in quarrying use and thus the concerns for surrounding properties are restricted to the additional impacts that may result from the crushing operation. Surrounding land

uses include forests, sugar and macadamia nut plantings. The closest dwelling is located approximately one-half mile from the subject site. Any potentially adverse impacts can be mitigated through conditions of approval as well as Department of Health regulations.

4. The proposed use will not create unreasonable demands on public facilities and utilities. All infrastructure essential to the operation of a crusher are present at the subject site.

5. The use described in the Petition is an unusual and reasonable use pursuant to HRS Chapter 205-6 and State Land Use Commission District Regulation, Part V.

DECISION AND ORDER

IT IS HEREBY ORDERED that Special Permit Number 78-319 for the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakua, Hawaii, Tax Map Key 4-7-06: portion of 1, be approved subject to the following conditions:

1. That the Petitioner shall secure the necessary permits from the State Department of Health prior to the commencement of rock crushing operations.

2. That all other applicable rules and regulations shall be complied with.

3. That the Special Permit, without further action by the County Planning Commission and State Land Use Commission, shall be automatically nullified upon the completion of the Honokaa to Waipio State road improvement project (State Project No. 240 A-01-71). The Petitioner shall be responsible for notifying the Planning Director of the termination of the

project. The Planning Director shall in turn notify the County Planning Commission and the State Land Use Commission of the project termination.

4. That should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

DATED: Honolulu, Hawaii, April 18, 1979.

LAND USE COMMISSION

By C. W. Duke
C. W. DUKE
Chairman and Commissioner

By Shinichi Nakagawa
SHINICHI NAKAGAWA
Vice Chairman and Commissioner

By James R. Carras
JAMES R. CARRAS
Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO
Commissioner

By Mitsuo Oura
MITSUO OURA
Commissioner

By George R. Pascua
GEORGE R. PASCUA
Commissioner

By Carol B. Whitesell
CAROL B. WHITESELL
Commissioner

No.

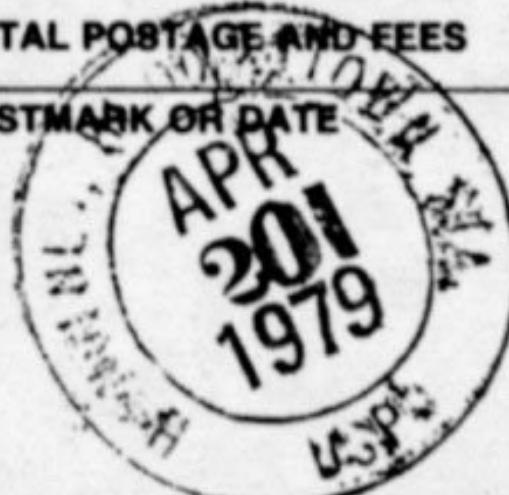
974916

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

CONSULT POSTMASTER FOR FEES	SENT TO	SIDNEY FUKE	
	STREET AND NO.	25 Aupuni St.	
	P.O., STATE AND ZIP CODE	Hilo, Hawaii 96720	
	POSTAGE	\$ 1.7	
	CERTIFIED FEE	.81	
OPTIONAL SERVICES	SPECIAL DELIVERY		
	RESTRICTED DELIVERY		
	SHOW TO WHOM AND DATE DELIVERED	.45	
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY		
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY		
RETURN RECEIPT SERVICE	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY		
TOTAL POSTAGE AND FEES		\$ 1.96	
POSTMARK OR DATE			



● SENDER: Complete items 1, 2, and 3.

Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

 Show to whom and date delivered. _____ Show to whom, date, and address of delivery. _____ RESTRICTED DELIVERY

Show to whom and date delivered. _____

 RESTRICTED DELIVERY

Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

SIDNEY FUKE

3. ARTICLE DESCRIPTION:

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

974916

1 (Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

4.

DATE OF DELIVERY

4/23/79

POST MARK

23
1979

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

No.

974923

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO

TERENCE T. YOSHIOKA

STREET AND NO.

80 Pauahi St., Rm. 203

P.O., STATE AND ZIP CODE

Hilo, Hawaii 96720

POSTAGE

\$.61

CERTIFIED FEE

.80¢

CONSULT POSTMASTER FOR FEES

OPTIONAL SERVICES
RETURN RECEIPT SERVICESHOW TO WHOM AND DATE
DELIVERED

.45¢

SHOW TO WHOM, DATE, AND
ADDRESS OF DELIVERY

¢

SHOW TO WHOM AND DATE
DELIVERED WITH RESTRICTED
DELIVERY

¢

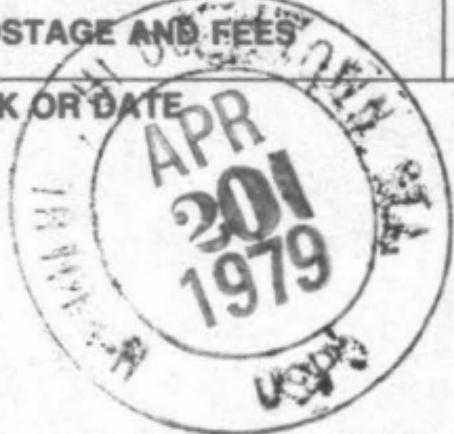
SHOW TO WHOM, DATE AND
ADDRESS OF DELIVERY WITH
RESTRICTED DELIVERY

¢

TOTAL POSTAGE AND FEES

\$ 1.97 ✓

POSTMARK OR DATE



**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)**

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, **leaving the receipt attached**, and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, afix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in Item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on
reverse.

1. The following service is requested (check one).

Show to whom and date delivered. ¢

Show to whom, date, and address of delivery. _____

RESTRICTED DELIVERY

Show to whom and date delivered: _____ ¢

RESTRICTED DELIVERY.

Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES).

2. ARTICLE ADDRESSED TO:

TERENCE T. YOSHIOKA

3. ARTICLE DESCRIPTION:

REGISTERED NO. | CERTIFIED NO. | INSURED NO.
974923

1 (Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY

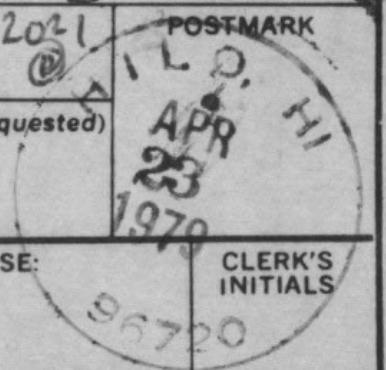
4.23.79

C2021

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:



SP78-319

327

Yamada

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS 979

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits. Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



State of Hawaii
LAND USE COMMISSION
Suite 1795, Pacific Trade Center
190 South King Street
Honolulu, Hawaii 96813

(Name of Sender)

(Street or P. O. Box)

(City, State, and ZIP Code)

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300

APR
23
1979

U.S. MAIL®

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition) SP78-319
for Special Permit of)
YAMADA AND SONS, INC.) YAMADA AND SONS, INC.

)

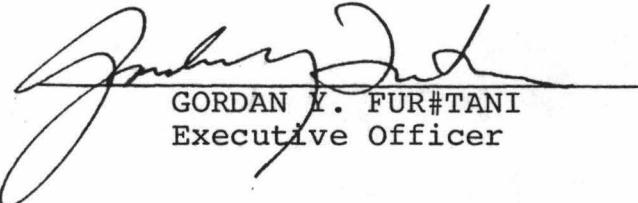
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use
Commission's Decision and Order was served upon the follow-
ing by certified mail:

SIDNEY FUKE, Planning Director
Hawaii Planning Department
25 Aupuni Street
Hilo, Hawaii 96720

TERENCE T. YOSHIOKA
Nakamoto, Yoshioka & Chillingworth
80 Pauahi Street, Room 203
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 20th day of April, 1979.


GORDAN Y. FURUKAMI
Executive Officer

October 20, 1978

Hawaii Planning Commission
25 Aupuni Street
Hilo, Hawaii 96720

Attention: Mr. Sidney Fuke, Planning Director

Gentlemen:

At its meeting on October 19, 1978, the Land Use Commission voted to approve a Special Permit request by Yamada and Sons, Inc. (SP78-319) to allow the establishment of a rock crusher on approximately 2.0 acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakua, Hawaii, Tax Map Key 4-7-06: portion of 1.

Approval of this Special Permit is subject to the conditions imposed by the Hawaii County Planning Commission. Please be advised that the petitioner's failure to comply with any of the delineated conditions of approval, particularly those relating to time, shall be reason for termination of the Special Permit. The Land Use Commission will not consider any request for time extension which is filed after the stipulated commencement or expiration dates.

A copy of the staff memorandum is herewith enclosed for your information. The Land Use Commission's Decision and Order on SP78-319 will be forwarded to you at a later date.

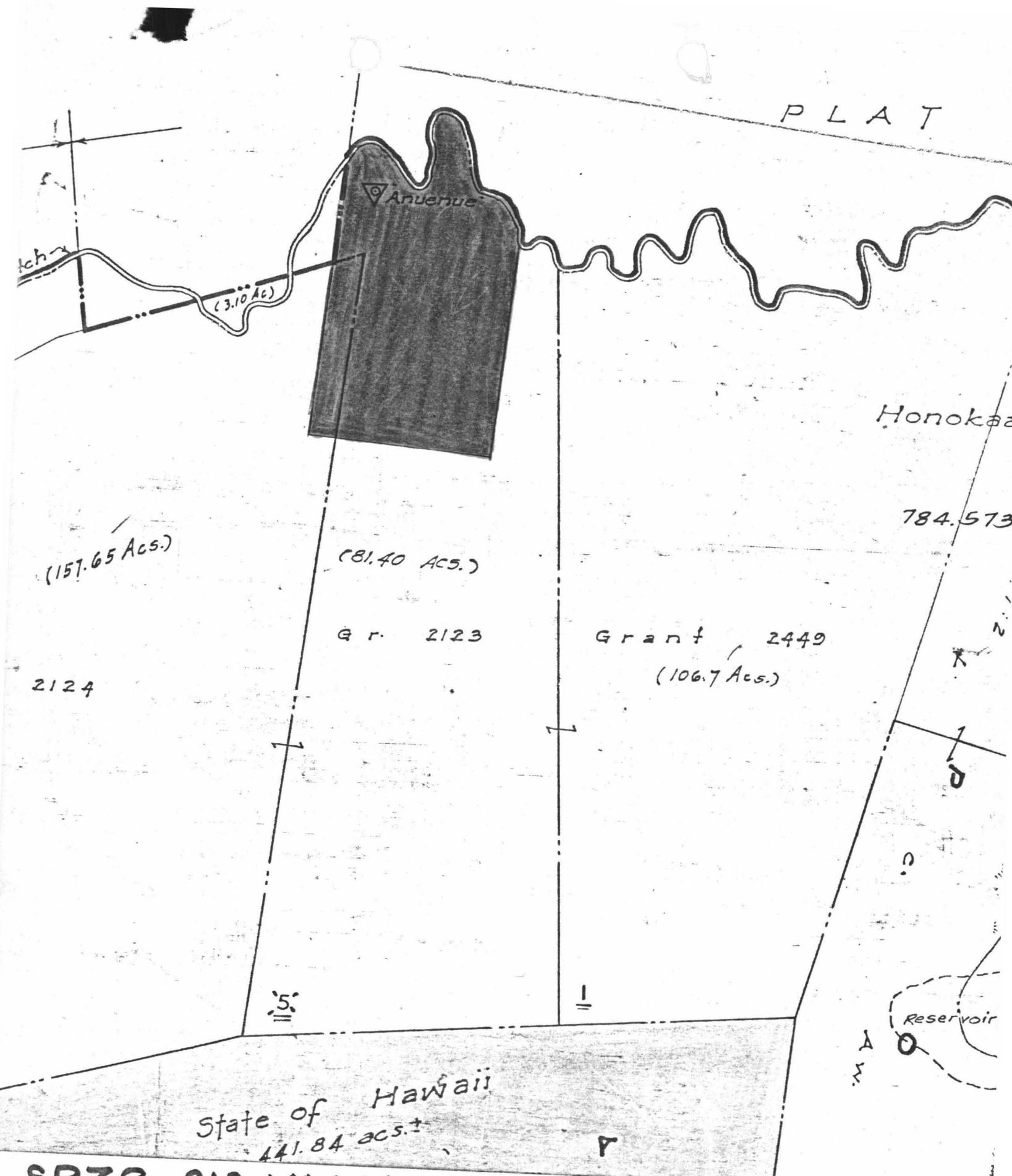
Sincerely,

GORDAN Y. FURUTANI
Executive Officer

Encls.

cc: Yamada & Sons, Inc.

Terence T. Yoshioka



SP78-319 YAMADA AND SONS, INC.
TMK 4-7-06: PORTION OF 1

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

October 19, 1978 - 9:30 a.m.

Approved

Senate Conference Room No. 5
2nd Floor, State Capitol
Honolulu, Hawaii

FEB 21 1979

COMMISSIONERS PRESENT: Charles Duke, Chairman
Shinichi Nakagawa, Vice Chairman
James Carras
Shinsei Miyasato
Mitsuo Oura
George Pascua
Carol Whitesell

COMMISSIONERS ABSENT: Colette Machado
Edward Yanai

STAFF PRESENT: Gordan Furutani, Executive Officer
Daniel Yasui, Planner
Allan Kawada, Deputy Attorney General
Dora Horikawa, Chief Clerk

Ray Russell, Court Reporter

ADDITION TO AGENDA

Upon motion by Commissioner Pascua, seconded by Commissioner Carras, it was unanimously agreed to add to the agenda a discussion of the archaeological study which had been submitted by the Moana Corporation, A76-418.

A76-418 - MOANA CORPORATION (Archaeological Study)

Mr. Walton Hong, representing the petitioner, noted that copies of the archaeological and biological surveys, prepared by the Archaeological Research of Hawaii, Inc., relative to the subject petition had been transmitted to the Commission. He recalled that the Commission, in approving the petition, had imposed a condition that archaeological and biological studies be conducted by the petitioner prior to development of the site. Thus, it was explained by Mr. Hong, he was appearing before the Commission to request a determination as to whether this condition had been satisfactorily met.

Following a lengthy discussion concerning Mr. Hong's request, Deputy Attorney General Allan Kawada counselled the

conditions that are imposed on the Special Permit, and that the Land Use Commission should take a firm position when time conditions are not met in timely fashion by the petitioner.

Commissioner Whitesell moved that the time extension request be denied, which was seconded by Commissioner Carras.

The Executive Officer requested a short recess to discuss possible alternatives to the problem.

11:50 a.m.

The Chairman called on the Executive Officer for a poll of the motion on the floor. The Commissioners voted as follows:

Ayes: Commissioners Pascua, Whitesell, Oura, Miyasato, Nakagawa, Carras, Chairman Duke

The motion was carried.

The Chairman directed the Deputy Attorney General to draw up a decision and order on the foregoing action of the Commission, clearly delineating the reasons for the denial of the extension request, and also indicating that the Commission was not denying the church the right to construct a building by this action.

SP76-255 - STANLEY SHIMIZU

REQUEST FOR A 6-MONTH TIME EXTENSION TO COMMENCE CONSTRUCTION OF A FREEZER/STORAGE FACILITY AT SOUTH KONA, HAWAII

Mr. Yasui pointed out the location of the subject property on the maps. A resume of the subject request was also presented.

It was moved by Commissioner Carras and seconded by Vice Chairman Nakagawa to deny the extension request due to the failure of the petitioner to meet the time conditions set forth by the Planning Commission. The motion was unanimously carried.

SP78-319 - YAMADA AND SONS, INC.

SPECIAL PERMIT APPLICATION TO ALLOW THE ESTABLISHMENT OF A ROCK CRUSHER AT KAPULENA, HAMAKUA, HAWAII

A summary report was presented by the Planner relevant to the subject request and the area was located on the maps.

Upon motion by Commissioner Carras, seconded by Commissioner Oura, the Special Permit request was unanimously approved, subject to the conditions imposed by the Hawaii County Planning Commission.

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP78-319 - YAMADA & SONS, INC. DATE October 19, 1978

PLACE Senate Conf. Room #5 TIME 9:30 a.m.
State Capitol, Honolulu

	NAME	YES	NO	ABSTAIN	ABSENT
	MIYASATO, SHINSEI	X			
	PASCUA, GEORGE R.	X			
	MACHADO, COLETTE				X
	YANAI, EDWARD				X
S	OURA, MITSUO	X			
M	CARRAS, JAMES	X			
	NAKAGAWA, SHINICHI	X			
	WHITESELL, CAROL	X			
	DUKE, CHARLES	X			

Comments:

I move that we approve this Special Permit, subject to the conditions set forth by the Hawaii Planning Commission.

STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM

TO: Land Use Commission

October 19, 1978

FROM: Staff

SUBJECT: SP78-319 - Yamada and Sons, Inc.

The petitioner, Yamada and Sons, Inc., is requesting a Special Permit to allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakua, Hawaii, Tax Map Key 4-7-06: portion of 1. The subject property is located between Kawaikalia and Kapulena gulches approximately 5,000 feet south of the Honokaa-Waipio Road at Kapulena.

The petitioner has secured a lease from the landowner, Honokaa Sugar Company, to utilize the subject area for a rock crushing operation. The subject area presently contains a quarrying operation run by Honokaa Sugar Company. This quarry had been in operation prior to establishment of the State Land Use Law, and has continued to exist as a non-conforming use.

In support of the request, the petitioner has in part stated the following:

"The Applicant is a Hawaii corporation engaged, inter alia, in the business of constructing roads and highways. Presently, the Applicant is under contract with the State of Hawaii to construct a highway from Honokaa to Waipio, being State Project No. 240 A-01-71.

"Pursuant to said contract, the Applicant obtained the rights to excavate aggregates from the quarry owned and operated by Honokaa Sugar for use in the construction of the highway, and retain YS Rock of 733 Kanoelehua Avenue, Hilo, Hawaii, to operate a rock crushing machine at the quarry site for the purpose of processing the aggregates to the required size.

"The quarry itself is located in an area presently zoned Agriculture (A-40a) by the County of Hawaii and constitutes a non-conforming use.

"Unbeknownst to the parties, the operation of the rock crushing machine by YS Rock was deemed to be an

expansion of a non-conforming use by the County of Hawaii Department of Planning and, hence, a violation of Part 4-2(2) of the State Land Use regulations. Accordingly, a demand that the Applicant cease such activities was transmitted by the Department of Planning on April 14, 1978, and complied with by the Applicant within a reasonable period of time thereafter.

"This special permit application now seeks to establish the lawful operation of the rock crushing machine at the quarry site for the duration of the Applicant's contract relating to the construction of the Honokaa to Waipio highway. In support of the special permit request, the Applicant declares as follows:

"A. THE OPERATION OF THE ROCK CRUSHER IS NOT CONTRARY TO THE OBJECTIVES SOUGHT TO BE ACCOMPLISHED BY THE LAND USE LAW AND REGULATIONS.

"It is noted in Part 1-2 of the State Land Use District Regulations promulgated by the State of Hawaii Land Use Commission that the purpose of the rules and regulations is to 'preserve, protect and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii.'

"The Applicant submits that the operation of the rock crusher would be in harmony with the above-stated purpose for the following reasons:

"1. As hereinafter mentioned, the quarry site is undesirable for agricultural purposes and is best suited for its present use as a quarry. Therefore, if operation of the rock crusher were permitted at the quarry, the Commission would be encouraging and maximizing the use of the quarry.

"2. The operation of the rock crusher at the quarry site would eliminate the wasteful and extravagant costs incurred in transporting the raw materials excavated from the site to and from Hilo for processing into usable aggregates. The elimination of unnecessary traffic from our public highways and the resulting fuel consumption arising therefrom would be of benefit to the public health and welfare of the people in the County of Hawaii.

"B. THE DESIRED USE WILL NOT ADVERSELY AFFECT SURROUNDING PROPERTIES.

"The quarry is situated in an area remote from residential neighborhoods or properties owned by

parties other than Honokaa Sugar. As such, the quarry has been in continuous operation for a period in excess of fifteen (15) years without adversely affecting the use and enjoyment of adjacent property owners or residences.

"To be sure, the operation of the rock crusher will result in the generation of a certain amount of dust and noise, but based on previous experience, said amount would not significantly increase the present levels to an extent noticeable by the surrounding property owners.

"C. THE USE WILL NOT UNREASONABLY BURDEN PUBLIC AGENCIES TO PROVIDE ROADS AND STREETS, SEWERS, WATER, DRAINAGE, SCHOOL IMPROVEMENTS, AND POLICE AND FIRE PROTECTION.

"No additional public services will be required to operate the rock crusher at the quarry site; therefore, no burdens will be placed upon the various public agencies nor will government funds be expended to accommodate the Applicant's request.

"D. UNUSUAL CONDITIONS, TRENDS, AND NEEDS HAVE ARISEN SINCE THE DISTRICT BOUNDARIES AND REGULATIONS WERE ESTABLISHED WHICH JUSTIFY GRANTING OF THE SPECIAL PERMIT.

"Since 1963, the approximate year when the quarry became a non-conforming use, the Honokaa Sugar Company lost its right to crush materials excavated from the quarry due to its failure to engage in such activity for a period of one (1) continuous year. The loss of such a right through disuse was never realized by Honokaa Sugar Company until the Applicant's resumption of crushing operations on the premises. This loss presents an unusual and unexpected condition which, the Applicant submits, justifies the granting of the special permit.

"E. THE LAND UPON WHICH THE PROPOSED USE IS SOUGHT IS UNSUITED FOR THE USES PERMITTED WITHIN THE DISTRICT.

"As previously mentioned, the area upon which the rock crusher will be operated has been used as a quarry site for well over 15 years. The area is, thus, unsuited for agricultural purposes due to the quarrying activities.

"F. THE PROPOSED USE WILL NOT SUBSTANTIALLY ALTER OR CHANGE THE ESSENTIAL CHARACTER OF THE LAND AND THE PRESENT USE.

"With regard to the character of the land, due to its use as a quarry, the introduction of the rock crusher would do little to affect any change thereto. Both the quarrying and crushing activities are related

industrial operations which normally go hand-in-hand at other industrially zoned locations. In essence, the crushing operations would constitute a use incidental to the quarrying operations rather than a new and different use of the property.

"G. THE PROPOSED USE WILL MAKE THE HIGHEST AND BEST USE OF THE LAND INVOLVED FOR THE PUBLIC WELFARE.

"Since the land has been, and will continue to be, utilized as a quarry by Honokaa Sugar Company, it would appear logical and practical to allow the Applicant to maximize the present function of the property by permitting the operation of the rock crusher thereon. The use of the rock crusher at the quarry site would enable the Applicant to meet its commitment to the State of Hawaii without undue economic hardship, and, as pointed out in Part A above, inure to the benefit of the public, as well."

The subject property is presently zoned Agricultural-40 acres (A-40a).

Surrounding land uses include sugar and macadamia nut cultivation. The closest dwelling is located approximately one-half mile north of the subject site. Access to the site is off of a plantation road which has a pavement width of 20 feet.

According to the Soil Conservation Service Soil Survey Report of December 1973, soil on the subject property is of the Kukaiau Series. In a representative profile, the surface layer is very dark grayish-brown silty clay loam about 10 inches thick. The subsoil is dark-brown silty clay loam about 40 inches thick. It is underlain by basalt.

Pertinent comments from governmental agencies:

1. Department of Transportation

"Our comments on the subject application are as follows:

- "1. Approval of the proposed action will benefit the general public.
- "2. The site has been utilized for quarrying operations in the previous years for various highway projects in the vicinity.
- "3. We recommend expeditious approval of the request to facilitate the completion of the highway project."

2. Department of Health

The State Department of Health noted the following:

"Authority to Construct Permit for the crusher's air pollution emission is required by the Department of Health's Public Health Regulation, Chapter 43, Air Pollution. Dust and noise concerns need to be studied."

Other cooperating agencies, including the Department of Public Works, Fire Department, Police Department, and Department of Water Supply had no objections to the Special Permit.

A public hearing on the Special Permit application was held by the Hawaii County Planning Commission on August 3, 1978. At that time, two (2) representatives of the petitioner, Mr. Terence Yoshioka and Mr. Robert Yamada, spoke in support of the request. Under public testimony, Mr. Al Larue and Mr. James MacClean spoke in opposition to the request, stating that another rock crushing operation was not warranted in the area. In response, Mr. Yoshioka clarified that the petitioner's intent is not to establish a business of supplying rocks to people, but to process rocks specifically for the Honokaa to Waipio road project.

In response to a question by Mr. David Ramos, the Chairman of the Planning Commission indicated that the petitioner would have to comply with the regulations and requirements of the State Department of Health. (For the Commission's information, the August 3, 1978 hearing transcript has been attached.)

On August 31, 1978, the Hawaii County Planning Commission voted to recommend approval of the Special Permit to the Land Use Commission based on the following findings:

"That the proposed use will not be contrary to the objectives sought to be accomplished by the State 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 these lands are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The area under consideration is classified as Agricultural by the State Land Use Commission. The Agricultural District includes lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural activities by reasons of topography, soil and other related characteristics. The subject area has been put to quarrying use by the Honokaa Sugar Company for quite some time as part of their overall agricultural operations. Due to the continuing quarrying use of the property, the site does not lend itself to the cultivation of crops. The quarrying use, however, is ancillary to the overall sugar industry operations. By allowing a crusher operation to be established by Yamada and Sons, Inc., to provide

materials for the Honokaa-Waipio Road project no further detraction from the agricultural use of the property will be encouraged. Further, the establishment of a crusher is not expected to have any adverse effect on the overall agricultural potential of the region.

"The proposed rock crusher activity is a conditionally permitted use under the County Zoning Code. The condition under which such a use would be permitted is the securing of a temporary use permit which would prescribe conditions to reduce nuisance and to specify the manner in which the site shall be left upon termination of the use. The proposed conditions to this Special Permit request would achieve the same end.

"That the establishment of the proposed use is not anticipated to adversely affect surrounding properties. As mentioned previously, the site is currently in quarrying use and thus the concerns for surrounding properties are restricted to the additional impacts that may result from the crushing operation. Surrounding land uses include forests, sugar and macadamia nut plantings. The closest dwelling is located approximately one-half mile from the subject site. Any potentially adverse impacts can be mitigated through conditions of approval as well as Department of Health regulations.

"That the proposed use is not anticipated to create unreasonable demands on public facilities and utilities. All infrastructures essential to the operation of a crusher are present at the subject site."

For the Commission's information, the meeting minutes of August 31, 1978 have been attached (County Exhibit T).

The favorable recommendation was subject to the following conditions:

- "1. That the petitioner shall secure the necessary permits from the State Department of Health prior to the commencement of rock crushing operations.
- "2. That all other applicable rules and regulations shall be complied with.
- "3. That the Special Permit, without further action by the County Planning Commission and State Land Use Commission, shall be automatically nullified upon the completion of the Honokaa to Waipio State road improvement project (State Project No. 240 A-01-71). The petitioner shall be responsible for notifying the Planning Director of the termination of the project. The Planning Director shall in turn notify the County Planning Commission and the State Land Use Commission of the project termination."

It was further stated by the Planning Commission that:
"Should any of the foregoing conditions not be met, the
Special Permit may be deemed null and void."

PLANNING COMMISSION

Planning Department
County of Hawaii

HEARING TRANSCRIPT
August 3, 1978

A regularly advertised public hearing, on the application of Yamada and Sons, was called to order at 1:01 p.m. in the Civic Center Conference Room, Waimea, South Kohala, Hawaii, with Chairman William F. Mielcke presiding.

PRESENT: William F. Mielcke
J. Walsh Hanley
Bert H. Nakano
Alfredo Orita
William J. Paris, Jr.
Charles H. Sakamoto

ABSENT: Shigeru Fujimoto
Lorraine R. Jitchaku
Haruo Murakami
Ex-officio Member
Akira Fujimoto

Sidney M. Fuke, Director
Virginia Goldstein, Planner
Ilima Piianaia, Planner
William Moore, Planner

David Murakami, representing Ex-officio Member Edward Harada
Lionel Meyer, Deputy Corporation Counsel

and approximately 13 people in attendance

CHAIRMAN: Item two on the agenda is the public hearing on the application of Yamada and Sons for a Special Permit to allow the operation of a rock crusher and the establishment of a quarry on approximately 20 acres of land situated within the State Land Use Agricultural District. The area involved is located between the Kawaikalia and Kapulena gulches approximately 5,000 feet south of the Honokaa-Waipio Road, Kapulena, Hamakua, TMK: 4-7-06:01. Staff?

PIIANAIA: (Presented background on file.)

CHAIRMAN: Thank you, Ilima. Commissioners, do you have any questions on the staff's background report? Yes, Commissioner Sakamoto.

SAKAMOTO: Ilima, what's that white square right next to that quarry?

PIIANAIA: There are three white blocks in there and those are all forest reserves.

SAKAMOTO: Forest reserves?

PIIANAIA: Yes.

EXHIBIT L-2

6 6
SAKAMOTO: Thank you.

CHAIRMAN: Where is the nearest residence?

PIIANAIA: It's not shown on the map, but it's about a half mile away.

CHAIRMAN: Okay. Commissioners, any further questions of the staff? Is the applicant or a representative of the applicant present?

YOSHIOKA: Yes.

CHAIRMAN: Mr. Yoshioka, do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

YOSHIOKA: I do.

CHAIRMAN: Please state your name into the microphone.

YOSHIOKA: I'm Terence Yoshioka and I'm acting as legal representative for the applicant and I'm appearing here today together with Robert Yamada who's also representing the applicant.

CHAIRMAN: Thank you, Mr. Yoshioka. You've heard the staff's background report on your Special Permit application, do you have anything that you'd like to add for the benefit of the Commission?

YOSHIOKA: Yes. Some points, I think, need to be made. With regard to the operation of the rock crusher and perhaps Mr. Yamada can correct me. I did some work previous to this, last year, in obtaining a clearance from the Department of Health and the Federal government for the emission controls for a particular unit. So I believe that all requirements of the Department of Health may have been met. I may be mistaken. We may be talking about a different unit. But if it's the same unit that's being utilized, emission control standards have been met.

Secondly, the notice of the permit provides for a request for the operation of a rock quarry on the subject premises, and I would have to say with regard to that request, we would have to have that withdrawn because I've consulted with Honokaa Sugar the owner of the property, with regard to a request for the establishment of a rock quarry and they felt it was not in their best interest to make such a request at this time. As such, we are simply asking for the right to engage in the rock crushing operation at the already established quarry site. It is the position of Honokaa Sugar that a request for a Special Permit to conduct quarrying operations is unnecessary because they have been doing so since this area was rezoned and since it became a nonconforming use. So I have to make that statement for the record.

CHAIRMAN: Does it change -?

PIIANAIA: No, that doesn't change the application. To clarify Mr. Yoshioka's first remark on the Department of Health's comments, I think what the Department of Health is saying that to establish

the rock crusher at that site you need a permit; but you'd have to check with them to see that all their requirements would be fulfilled.

YOSHIOKA: Okay.

CHAIRMAN: Mr. Yoshioka, do I understand now that Honokaa Sugar has no intention to use the quarry after Mr. Yamada is finished with the construction of the road?

YOSHIOKA: No, I don't think that's correct. They do intend to use it; however, it's their position, and I hate to stand here as a representative of Honokaa Sugar because I am not one, but if I may be allowed an opportunity to explain their position as explained to me by Mr. Robert Evans, the engineer of Honokaa Sugar, they feel that they are already operating a quarry and that that quarry was being operated as of the date when the land was rezoned. And as such, it is a nonconforming use and they do not want us, in our application, to represent them in asking for a Special Permit for the operation of a quarry, which they feel they are entitled to.

PIIANAIA: The quarry has been considered as a nonconforming use; however, under the State Land Use Regulations, if a nonconforming use of land ceases for one year, then they cannot reestablish that use except through Special Permit.

CHAIRMAN: Mr. Director.

FUKE: Mr. Yoshioka, what about the rock crusher operation? Would Honokaa Sugar have any objections to continuing the rock crushing operation after your client leaves that area?

YOSHIOKA: No. I don't think they would have any objections to that.

FUKE: So the intent is to, well, Honokaa Sugar would have no objection to supporting the concept of a rock crusher within the quarrying operation, but they do object to your representing them to legitimize the quarry?

YOSHIOKA: That's correct, or to define the extent of the quarry.

FUKE: Okay. Mr. Chairman, if I may just give a little background. The Land Use Commission, the Land Use Law, the interpretation that we received from the Land Use Commission was that quarrying operations are allowed in the agricultural district under a Special Permit. Now they do recognize nonconformity. They do also provide that the laws, the regulations provide that if you fail to utilize the quarry within a year's period continuously, then the quarrying operation ceases. We have had some difficulty as far as what constitutes an expansion of an existing quarry. Now the Land Use Law also provides that you have the right to enjoy the use of the quarry but you cannot expand it. So the problem became to what extent, when you excavate additional area, would that constitute an expansion. The Land Use Commission had advised us that if there are any expansion by digging out more land area, that that would technically be considered an expansion.

Therefore, what we have done in the past is to notify all individuals or developers that have quarrying around the island to come in for a Special Permit to legitimize existence of the quarry and, more importantly, to clearly outline where the boundaries of the quarry would be. This was done in subsequent petitions for, I guess, like the Parker Ranch, the various plantations around.

The Land Use Commission has also advised that while you do have the right to continue like the quarrying, if you introduce a new item such as a rock crushing operation, which to some extent changes the complexion of just excavation, then that technically constitutes an expansion. And this is why Mr. Yoshioka, in behalf of Mr. Yamada, is here today.

So, if I understand you correctly, Terry, what you're saying is that Honokaa Sugar Company's position is just that a quarry is over there and whether to excavate additional area, they don't believe that that constitutes an expansion of a nonconforming use?

YOSHIOKA: That's essentially, I think, their position. And they don't want to be bound by any request that we might make to define the physical boundaries of that quarry operation. They themselves will handle the problem if and when any action is taken to define those boundaries. And they would like to be responsible themselves for determining to what extent they may utilize the quarry. And as Sidney pointed out, really what we are asking for right now is to extend the use of the quarry to the rock crushing operation as well. I might point out that as part of the quarrying operation, Honokaa Sugar has for all these years utilized the quarry by excavating the materials and screening those materials; and what we have been doing in order to obtain aggregates of suitable size is to continue the screening process. However, we would also like the right to reduce larger aggregates into usable size.

CHAIRMAN: I understand what you're saying Mr. Yoshioka, and I think my question is for the staff. The quarry as it exists today, is it a legitimate operation?

FUKE: The quarry as it exists today is a legitimate operation. The problem, however, would come about when if, maybe not in this case Mr. Yamada, but maybe if Honokaa Sugar decides to increase the acreage involved in the quarrying operation, then that technically would constitute an expansion of a nonconforming use, and that would not be allowed.

Now I did have discussions with Mr. Yoshioka just when this Special Permit was being placed on the agenda and asked him to, you know, once and for all, let's just establish the quarry so there won't be any hassles in the future. This he had agreed and he had apparently discussed it at that point in time with Honokaa Sugar. But now, I guess, they do have some reservations over the initial decision. So technically what is before the Commission right now in light of Mr. Yoshioka's statement is really to allow the operation of a rock crusher on an existing quarry on land situated within the State Land Use Ag District.

CHAIRMAN: Commissioner Sakamoto.

SAKAMOTO: Mr. Yoshioka, how many days a week are you going to use the crusher?

YOSHIOKA: I believe it's five working days a week would be the normal use of the rock crusher.

SAKAMOTO: But in case of, now, Mr. Yamada have that crusher now, what if Honokaa Sugar wants to use some of the materials?

YOSHIOKA: He is paying them a commission for the materials that are excavated. So I don't think that they'll be so free with their use, and it is needed for the construction of the highway.

CHAIRMAN: I had a similar question. Are the materials going to be used just for the construction of the highway? He's not going to be selling materials to other people?

YOSHIOKA: No, primarily for that purpose. But whatever else they can excavate, excess materials, then they'll be using it for resale if they don't have any other projects that they can use it for. Transportation is a problem, of course. If they had to transport the material to sites which are too far away to be economically feasible, then what they would attempt to do is to establish quarry sites closer to the project and for the excess materials that are remaining, then they would attempt to dispose of it through resale.

CHAIRMAN: Mr. Yoshioka, how long is the project in question going to take, the construction of the road that you specifically refer to?

YOSHIOKA: Perhaps Mr. Yamada can best answer that.

CHAIRMAN: Mr. Yamada, we'll have to ask you to come up to the microphone, and we will swear you in. Please raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

YAMADA: Yes, I do.

CHAIRMAN: For the record, it's Mr. Robert Yamada, Madam Secretary.

YAMADA: Yes, my name is Robert Yamada, president of Yamada and Sons, and YS Rock. YS Rock is doing the supplying of the rock to YS, Inc. This project here was purely set up to furnish materials for increment one, the road from, I say, from Honokaa to Waipio. I think most of you know that there is a plan to build a road right around the Waipio Valley to come up and meet Mudlane, and these are the two increments. And the first increment should be completed in the month of October; and the second increment, we have about ten months to complete the second increment. In other words, it would be about a year; and within a year's time, we'll complete the two increments.

CHAIRMAN: Thank you, Mr. Chairman. Commissioners, do you have any questions of the applicant or his representative? There does not appear to be any questions from the Commission, Mr. Yamada. We do ask that you and Mr. Yoshioka remain in the audience as this is a public hearing and we will be asking the audience if they have any questions.

YAMADA: Yeah, okay, before I sit down, I really don't know, Mr. Chairman, whether I'll have a chance to speak or not. But I do appreciate this Board here, if possible, to expedite because it's holding up the project and makes it's very difficult to complete this project. In the first place, although I was, been accused of being a councilman and not knowing all the rules, but, Mr. Chairman, you know that in the County, it's so complex, especially the Planning Commission. I can't get to know every detail of the rules and regulations, and it changes, too. And we have many others, from the Finance, Public Works, Parks and Recreation, and all of that. So these are some of the things that I overlooked. And I thought because it was an established quarry, plantation claim that they've been quarrying there as long as they remember, and I thought the only thing we should do is to take our crusher, take the materials, and crush, and use on the construction of a public highway. And this is the situation. There was no intent of violating any rules and regulations. So if this Board can expedite and send it to the Land Use Commission for approval so that it would be legitimate for us to crush and complete the highway as soon as possible will be greatly appreciated.

CHAIRMAN: Okay, thank you, Mr. Yamada. Ladies and gentlemen, this is a public hearing on the application of Yamada and Sons for a Special Permit to allow the operation of a rock crusher on an existing quarry on approximately 20 acres of land situated within the State Land Use Agricultural District.

The Chair at this time would like to invite anyone from the audience who would like to testify either for or against the application before the Commission. Yes, sir, if you'd come forward please. Please raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

LARUE: I do.

CHAIRMAN: Would you state your name into the microphone.

LARUE: Al Larue and I have a quarry here on the old Ahualoa Road. And I brought it in here because the prices from Hilo were too high and I've sold to the community at reasonable prices for the last, over seven years. And there hasn't been enough business to warrant another crusher coming in here. The best I've done is 30,000 yards in one year. Its usually been between 20 and 30 at the most. The first six months, there's only 7,119 yards went out. Now it's picking up a little bit again. If another crusher comes in competition, it'll break me. And I have almost \$400,000 invested in there already, and I don't think there should be another crusher in competition so close cause we have a competitor not too far away already.

CHAIRMAN: Commissioners, do you have any questions of Mr. Larue who stated that he is against the application, doesn't feel that an additional crusher is needed in this area?

SAKAMOTO: I have one.

CHAIRMAN: Commissioner Sakamoto.

SAKAMOTO: Mr. Larue, where is your crusher located?

LARUE: It's on the old Ahualoa Road from Lakeland to Honokaa.

SAKAMOTO: Do you supply your crushed rocks to all individuals?

LARUE: I supply to everybody, all the contractors and all the individuals that come by, yes.

CHAIRMAN: Commissioners, any further questions of Mr. Larue? Thank you. If there are no further questions, the Chair at this time would also -. Yes, sir, would you come forward. Would you raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

McCLean: I do.

CHAIRMAN: Would you state your name into the microphone please.

McCLean: My name is James McClean.

CHAIRMAN: Mr. McClean, please proceed.

McCLean: Yes, I represent West Hawaii Concrete which also has a quarry not nearly as close to the project but in the general vicinity, which is by Saddle Road; and I just question the idea that we bring in another rock crusher because as Mr. Larue stated there has been a very small amount of business in this area and we've all been hurting for many, many years; and to bring another crusher in to compete would just be very difficult for us.

This particular project, I would imagine, would be closer to Mr. Larue's quarry, but the fact that you take a whole piece of pie and cut it up and split it up and spread it among everybody and it gets rather thin when you cut it down that way. So I just question this idea of crushing this rock and selling it on outside jobs which they have indicated they might do, as well as supplying materials for this particular road. Everyone that bids on a job, expect to bring rocks in. When they were going to build the road, everybody bid on a job based on we were going to bring rocks in either from Hilo, or from Mr. Larue's quarry. And now to go ahead and try to bring the rocks in from an adjacent quarry to the project is different than what the original idea was. So I feel that this is something that is coming along after the job is bid and it is cutting away from the people of the area that are trying to have a living on this kind of business.

CHAIRMAN: Commissioners, any questions of Mr. McClean?

SAKAMOTO: I have one, not for Mr. McClean, but one for Mr. Yoshioka.

CHAIRMAN: Okay, any questions for Mr. McClean? Okay, Mr. McClean, your testimony is so noted. Thank you.

Mr. Yoshioka, Commissioner Sakamoto has a question for you.

SAKAMOTO: Mr. Yoshioka, you said that this crusher, you're going to use the rocks strictly for the road, right?

YOSHIOKA: Well, the intent was to use all of the rocks that were obtained from the quarry for use at this project because he cannot, economically speaking, it would not be feasible to transport the rocks to other sites for use. The cost of transportation would be too great.

In response to the objections posed by the two gentlemen before me, I'd like to point out that I would or could sympathize with their plight. However, what we are trying to do is not to, shall I say, create a new supply of rocks. The quarry has already been there for well over 15 years. It's been available as a source of supply for aggregates. We are not creating a new supply. All we are doing is to allow the processing of the rocks at the quarry site rather than going through the extensive procedure of transporting it back to Hilo for processing. I would imagine that, with regard to these two gentlemen that, when their bids, if any were submitted for this road site, that the bids were premised upon the rocks coming from their quarry site rather than transporting it from Hilo.

And if there is a concern with regard to the competition that the sale of these aggregates would pose to these other parties, we would be willing to restrict the use of the aggregate to the construction of the highway.

CHAIRMAN: Yes, please come forward because we are recording the proceedings today; and for the record, it's Mr. McClean speaking.

McCLean: First of all, are you going to crush only rocks excavated from the project site or are you going to crush rocks from the quarry site?

YAMADA: From the quarry site.

McCLean: From the quarry site. So therefore you're going to take rocks out of the quarry; and, is it my understanding that this quarry is a permissible, is a usable quarry at this time?

CHAIRMAN: That is correct.

McCLean: And it is available to excavate rocks without, that's an applicable -?

CHAIRMAN: That is correct.

McCLean: Okay, and the other question I had was, okay, now Honokaa Sugar has been excavating rocks on this quarry for many, many years, have they used these rocks for anything other than the purpose than their own particular roadways?

CHAIRMAN: I don't think that Mr. Yoshioka is in a position to answer that question, Mr. McClean.

MCCLEAN: Well, I would like to say that I would imagine, and I don't know that the rocks being taken from the quarry was used for projects on their own particular private roadways, not on a public roadway. And so, therefore, it's a new use that is being used in this quarry. In other words, it's a quarry that Honokaa Sugar used to excavate rocks to maintain their own roadways, not to go and use on public jobs or to be used by a contractor for a different use.

CHAIRMAN: Are you stating that as a matter of fact, or is that a matter of assumption, Mr. McClean?

MCCLEAN: It's a matter of assumption.

CHAIRMAN: Oh, I hope you're not purposely trying to mislead the Commission.

MCCLEAN: No, I would like to say that Honokaa Sugar is not a contracting company, therefore, I don't think, or I don't know, but I don't think that they have used these rocks in contracting jobs other than maintaining their own roads, which all sugar companies have their own quarries and use; therefore, it's for their own particular use.

CHAIRMAN: Yes, I don't think that's a question really before the Commission at this time, Mr. McClean. Thank you. Mr. Yoshioka.

YOSHIOKA: May I just respond to that one point that he made. I don't believe that it's really relevant whether or not the plantation is utilizing the rocks for its own use or for others. It would be like saying that if at the time that your particular quarry was established and you sold only to contractors that, therefore, if some else other than a contractor, residential owner came to you and said I want to buy rocks, then therefore you're precluded from quarrying activities to sell to the residential owner. The use of the site is what is important. If it's permissible to quarry, then it really has no bearing as to whether or not it's for own consumption or for sale to one individual or to the other.

NAKANO: Mr. Chairman?

CHAIRMAN: Yes, Commissioner Nakano.

NAKANO: I have a question. Is this a portable crusher that you're talking about?

YOSHIOKA: Well, it's portable in a sense that it can be moved from place to place; but it's about 120 feet long and it's several tons.

NAKANO: Well, the question is, is this portable, it's mounted on wheels?

YOSHIOKA: Yes.

CHAIRMAN: Yes, Mr. Yamada, please come forward.

YAMADA: I just want to inform the Board Members that this is not the first time that the Honokaa Sugar sold the material. We're paying royalty to Honokaa. We built two segments of the Honokaa-Waipio and all our materials came from Honokaa pit. So this is not the first time. But this is the first time we are required to get a permit to establish the crusher. I think in those days we didn't need no permit. So we just went in and crushed and used on a highway. So this is our fourth increment that we're working in the Honokaa area. I just want to correct that because it's not the first time.

CHAIRMAN: Okay.

YAMADA: And I'd also like to mention that I'm sure all of you know that the State requirements are very strict and all the requirements have to be met, otherwise you can't use the material. And some of the problems that, other people, supplies, it has to meet their specs and I'm not positive whether their specs will meet. And also the distance, all down hill and moreso, James' quarry is about ten miles away from Waimea, and it's almost impossible, economically, it's impossible. I can understand his concern. But that's the situation.

CHAIRMAN: Okay, thank you, Mr. Yamada. Yes, Mr. Larue.

LARUE: You know Bob says he used it two times for the roads, that's the disadvantage against the other contractors to start with. Because he hauls from Honokaa and he's the only man who can get the materials from Honokaa.

CHAIRMAN: Well, I don't think the Commission is going, you know, we appreciate the concerns over the economy in the area. I think one of the basis of free enterprise is competition. I'm not speaking for the Commission at this time. And the question before us is whether a rock crusher can be used in this existing quarry, that is really what we are considering at the present time. It is a land use question.

LARUE: You're going to break somebody because you want it all in. That what it amounts to. You get too many crushers on one site, well, somebody's going to go down the drain.

CHAIRMAN: Mr. Larue, it's not the Commission's intent to break anybody in terms, using those words. Again, the question before the Commission is one of land use and the question that is being considered is whether a crusher may be used in an existing quarry. That is really what we are considering.

Is there any further testimony to come before the Commission.

FUKE: May I say something?

CHAIRMAN: Sure. Mr. Director.

FUKE: Mr. Yoshioka, can I just clarify again the application. The application is really to allow the operation of a rock crusher on an existing nonconforming quarry on lands situated within the State Land Use Agricultural District, is that in a nutshell what the requested use is?

YOSHIOKA: Yes.

FUKE: Is it also the intent to have the rock crusher operate in perpetuity or in conjunction with the quarrying operation or are you looking at more of, maybe a stipulated time period, or like a temporary use permit for the rock crushing operation, wherein after the project is through that the rock crushing operation would terminate?

YOSHIOKA: Insofar as our needs are concerned, we are only interested in operating the rock crusher during the term of construction. As far as Honokaa Sugar is concerned, I'm quite sure that they would welcome the right to continue the crushing operations, if and when they decide to bring in their own crusher. But insofar as our purposes are concerned, we would be happy with a permit, a special permit, for the duration of the construction.

FUKE: But at this point in time, you can't speak on behalf of Honokaa Sugar?

YOSHIOKA: No, I cannot, that's right.

FUKE: But for you and your client's interest, your interest is just for the duration of this particular project?

YOSHIOKA: Yes. I have to say that because in our application, we do make application for the Special Permit during the term of construction, and Honokaa Sugar approved it on that basis. Anything more than that I would not be able to represent on their behalf.

CHAIRMAN: Okay. Commissioners, you're all clear on that now? We're talking about the use of the rock crusher in an existing nonconforming quarry during the term of the contract for the construction of the road. Okay, are there any further questions of the applicant or does anyone else in the audience wish to testify either for or against the application?

Yes, Sir. Would you raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

RAMOS: I do.

CHAIRMAN: Please state your name into the microphone.

RAMOS: My name is David Ramos from Parker Ranch.

CHAIRMAN: Yes, Mr. Ramos.

RAMOS: I would just like to ask the Commission one question; and, that is, if approval is granted, would it be subject to the Board of Health's study on noise and air pollution?

CHAIRMAN: Yes, it would. Any further testimony to come before the Commission? If there's no further testimony to come before the Commission, the Chair will entertain a motion either to continue the public hearing or a motion to close the public hearing. What is your pleasure?

NAKANO: Mr. Chairman, I move that the public hearing be closed.

CHAIRMAN: Is there a second to the motion?

PARIS: I second the motion, Mr. Chairman.

CHAIRMAN: It has been moved by Commissioner Nakano and seconded by Commissioner Paris that the public hearing be closed. All those in favor so signify by saying aye?

COMMISSIONERS: Aye.

CHAIRMAN: Oppose, same sign? The public hearing is closed.

Public hearing adjourned at 1:45 p.m.

Respectfully submitted,

Sharon M. Nomura

Sharon M. Nomura
Secretary

A T T E S T:

W. F. Mielcke

William F. Mielcke
Chairman, Planning Commission

PLANNING COMMISSION

Planning Department
County of Hawaii

EXHIBIT T

MINUTES

August 31, 1978

The Planning Commission met in regular session at 9:12 a.m. in the Conference Room, First Hawaiian Bank, Kailua, North Kona, Hawaii, and at 1:15 p.m. in the Kealakehe School Cafetorium, Kealakehe, North Kona, Hawaii, and at 4:30 p.m. in the Conference Room, Waimea Civic Center, Waimea, South Kohala, Hawaii, with Chairman William F. Mielcke presiding.

PRESENT: William F. Mielcke (Left
at 5:36 p.m.)

J. Walsh Hanley

Lorraine R. Jitchaku

Bert H. Nakano

Alfredo Orita

William J. Paris, Jr.

Charles H. Sakamoto (Left at 3:15 p.m.)

ABSENT: Shigeru Fujimoto
Haruo Murakami

Ex-officio Member
Akira Fujimoto

Sidney M. Fuke, Director

Ilima Piianaia, Planner

William Moore, Planner

Lionel Meyer, Deputy Corporation Counsel (Left at 5:36 p.m.)
David Murakami, representing Ex-officio Member Edward
Harada (Left at 5:36 p.m.)

And approximately 8 people at 9:12 a.m., 44 people at
1:15 p.m. 7 people at 4:30 p.m. and 6 people at 7:00
p.m.

that the Commission understands this area, they will take a far greater look in the planning of the area.

RECESS: A recess was called at 3:15 p.m.

RECONVENED: The meeting reconvened at 4:44 p.m. in the Conference Room, Waimea Civic Center, South Koahala, Hawaii.

SPECIAL PERMIT
YAMADA AND SONS
KAPULENA,
HAMAKUA Application of Yamada and Sons for a Special Permit to allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District. The area involved is located between the Kawaikalia and Kapulena gulches, approximately 5,000 feet south of the Honokaa-Waipio Road, Kapulena, Hamakua, TMK: 4-7-06:01.

Staff presented recommendation for approval with conditions on file.

The petitioner's representative, Robert M. Yamada, stated that they will be able to comply with the conditions as outlined by the staff. He added that he would appreciate the Commission expediting this matter.

It was moved by Commissioner Orita and seconded by Commissioner Nakano to send a favorable recommendation to the State Land Use Commission with the conditions outlined by the staff. A roll call vote was taken and motion carried with six ayes.

SPECIAL PERMIT
EUNICE AND JANE
PU'UKAPU, SOUTH
KOHALA Public hearing on the application of Eunice and Jane Kamanu for a Special Permit to allow the establishment of a family care home on 9,750 square feet of land situated within the State Land Use Agricultural District. The area involved is located approximately 400 feet north of the Mamalahoa Highway in the Kamuela Meadows Subdivision, about 3,500 feet west of the Mud Lane-Old Mamalahoa Highway junction, Pu'ukapu, South Kohala, TMK: 6-4-09:30.

Staff presented background on file.

The petitioner, Eunice Kamanu, informed the Commission that the other lot is presently vacant and they have no plans for it at present.

Staff clarified that the Public Health Regulation limits a family care home to a maximum of four people in addition to the petitioners.

In response to some of the concerns raised in the Matsushima's letter, Ms. Kamanu pointed out that the maximum number of vehicles they anticipate is three, they plan to erect a 5-foot chain-link fence to prevent residents from straying, they do not have any other existing family care homes, and they do not foresee any excessive noise to be created by their residents.

Staff informed the Commission that the Department of Public Works has stated that the structure does meet the Building Code requirements for a family care home.

STATE OF HAWAII
LAND USE COMMISSION
Suite 1795
Pacific Trade Center
190 S. King Street
Honolulu, Hawaii 96813

October 6, 1978

Mr. Sidney Fuke, Planning Director
Hawaii County Planning Department
25 Aupuni Street
Hilo, Hawaii 96720

Dear Mr. Fuke:

Enclosed is a Notice of Land Use Commission meeting and the Agenda for the Meeting.

Please note that petitions

SP75-224 - Church of Jesus Christ of Latter-Day Saints (Time Extension)

SP76-255 - Stanley Shimizu (Time Extension)

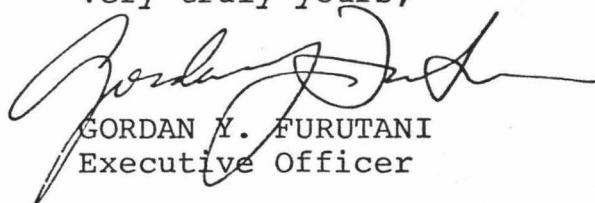
SP78-319 - Yamada and Sons, Inc.

SP78-320 - Kona Baptist Church

will be acted on at that time.

Should you have any question on these matters, please contact this office.

Very truly yours,


GORDAN Y. FURUTANI
Executive Officer

Enclosure - Agenda

STATE OF HAWAII
LAND USE COMMISSION
Suite 1795
Pacific Trade Center
190 S. King Street
Honolulu, Hawaii 96813

October 6, 1978

Mr. Robert M. Yamada
Yamada & Sons, Inc.
733 Kanoelehua Avenue
Hilo, Hawaii 96720

Dear Mr. Yamada:

Enclosed is a Notice of Land Use Commission meeting and the Agenda for the Meeting.

Please note that petition

SP78-319 - YAMADA AND SONS, INC.

will be acted on at that time.

Should you have any questions on this matter, please contact this office.

Very truly yours,



GORDAN FURUTANI
Executive Officer

Enclosure - Agenda

STATE OF HAWAII
LAND USE COMMISSION
Suite 1795
Pacific Trade Center
190 S. King Street
Honolulu, Hawaii 96813

October 6, 1978

Mr. Terence T. Yoshioka
80 Pauahi Street, Room 203
Hilo, Hawaii 96720

Dear Mr. Yoshioka:

Enclosed is a Notice of Land Use Commission meeting and the Agenda for the Meeting.

Please note that petition

SP78-319 - YAMADA AND SONS, INC.

will be acted on at that time.

Should you have any questions on this matter, please contact this office.

Very truly yours,



GORDAN FURUTANI
Executive Officer

Enclosure - Agenda

STATE OF HAWAII
LAND USE COMMISSION

NOTIFICATION OF LAND USE COMMISSION MEETING

DATE, TIME & PLACE

October 19, 1978 - 9:30 a.m.
Senate Conference Room No. 5
2nd Floor, State Capitol
Honolulu, Hawaii

A G E N D A

I. ACTION

1. SP75-224 - Church of Jesus Christ of Latter-Day Saints (Time Extension) (Hawaii)

To allow a six (6) month time extension to commence construction of a church on approximately seven (7) acres of land situated within the State Land Use Agricultural District at Keopu 3rd, North Kona, Hawaii.

2. SP76-255 - Stanley Shimizu (Time Extension) (Hawaii)

To allow a six (6) month time extension to commence construction of a freezer/storage and office facility on approximately one (1) acre of land situated within the State Land Use Agricultural District at Ke'e 2nd, South Kona, Hawaii.

3. SP78-319 - Yamada and Sons, Inc. (Hawaii)

To allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakua, Hawaii.

4. SP78-320 - Kona Baptist Church (Hawaii)

To allow the construction of a classroom building on approximately 2.4 acres of land situated within the State Land Use Agricultural District at Keauhou 1st, North Kona, Hawaii.

5. A78-438 - Grove Farm Company, Inc. (Kauai)

To reclassify approximately 61 acres of land from the Agricultural District to the Urban District at Lihue, Kauai, for the development of a multi-phase regional, mall-type shopping center.

II. MISCELLANEOUS

1. Preview of Draft Slide-Tape Presentation on the State Land Use Law
2. Discussion of Defective Filing Guidelines and Special Permit procedures
3. Adoption of Minutes AUG 15 1978
4. Meeting Schedule



PLANNING DEPARTMENT

25 AUPUNI STREET • HILO, HAWAII 96720

COUNTY OF
HAWAII

HERBERT T. MATAYOSHI
Mayor

SIDNEY M. FUKE
Director

DUANE KANUHA
Deputy Director

October 4, 1978

Mr. Gordan Furutani
Executive Officer
Land Use Commission
190 South King Street
Suite 1795
Honolulu, Hawaii 96813

SP78-319

OCT 5 10 55 AM '78

LAND USE COMMISSION
STATE OF HAWAII

Dear Mr. Furutani:

Special Permit Application
Petitioner: Yamada and Sons

In accordance with Chapter 205, Section 205-6, Hawaii Revised Statutes, we are transmitting the decision and findings of the County Planning Commission on the above application.

The special permit request was to allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakau, Hawaii, Tax Map Key 4-7-06:01.

The Planning Commission at a duly advertised public hearing on August 3, 1978 in the Civic Center Conference Room, Waimea, South Kohala, Hawaii, discussed the subject request. The Commission on August 31, 1978, voted to recommend the approval of the special permit to the Land Use Commission based on the following findings:

That the proposed use will not be contrary to the objectives sought to be accomplished by the State 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 these lands are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The area under consideration is classified as Agricultural by the State Land Use Commission. The Agricultural district includes lands

surrounded by or contiguous to agricultural lands and which are not suited to agricultural activities by reasons of topography, soil and other related characteristics. The subject area has been put to quarrying use by the Honokaa Sugar Company for quite some time as part of their overall agricultural operations. Due to the continuing quarrying use of the property the site does not lend itself to the cultivation of crops. The quarrying use, however, is ancillary to the overall sugar industry operations. By allowing a crusher operation to be established by Yamada and Sons, Inc., to provide materials for the Honokaa-Waipio Road project no further detraction from the agricultural use of the property will be encouraged. Further, the establishment of a crusher is not expected to have any adverse effect on the overall agricultural potential of the region.

The proposed rock crusher activity is a conditionally permitted use under the County Zoning Code. The condition under which such a use would be permitted is the securing of a temporary use permit which would prescribe conditions to reduce any nuisance and to specify the manner in which the site shall be left upon termination of the use. The proposed conditions to this Special Permit request would achieve the same end.

That the establishment of the proposed use is not anticipated to adversely affect surrounding properties. As mentioned previously, the site is currently in quarrying use and thus the concerns for surrounding properties are restricted to the additional impacts that may result from the crushing operation. Surrounding land uses include forests, sugar and macadamia nut plantings. The closest dwelling is located approximately one-half mile from the subject site. Any potentially adverse impacts can be mitigated through conditions of approval as well as Department of Health regulations.

That the proposed use is not anticipated to create unreasonable demands on public facilities and utilities. All infrastructures essential to the operation of a crusher are present at the subject site.

The favorable recommendation was also subject to the following conditions:

1. That the petitioner shall secure the necessary permits from the State Department of Health prior to the commencement of rock crushing operations.

Mr. Gordan Furutani
Page 3

2. That all other applicable rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

The request is also subject to the following time condition:

That the Special Permit, without further action by the County Planning Commission and State Land Use Commission, shall be automatically nullified upon the completion of the Honokaa to Waipio State road improvement project (State Project No. 240 A-01-71). The petitioner shall be responsible for notifying the Planning Director of the termination of the project. The Planning Director shall in turn notify the County Planning Commission and the State Land Use Commission of the project termination.

Enclosed are copies of the Exhibits from the subject docket.

Sincerely,



WILLIAM F. MIELCKE
Chairman, Planning Commission

lgy
Enclosures

cc Mr. Terence Yoshioka
Yamada and Sons
Land Use Division, DPED
Kona Services Office

COPY

PLANNING DEPARTMENT

25 AUPUNI STREET LAND USE COMMISSION
STATE OF HAWAII

COUNTY OF HAWAII

HILO, HAWAII 96720

SEP 5 7 40 AM '78

September 1, 1978

Mr. Terence T. Yoshioka
80 Pauahi Street
Room 203
Hilo, Hawaii 96720

Dear Mr. Yoshioka:

Special Permit Application
Yamada and Sons
Tax Map Key 4-7-06:01

The Planning Commission at its regular meeting of August 31, 1978 considered the above application for a special permit to allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District Kapulena, Hamakua, Hawaii.

The Commission voted to forward a favorable recommendation to the Land Use Commission subject to the following conditions:

1. That the petitioner shall secure the necessary permits from the State Department of Health prior to the commencement of rock crushing operations.
2. That all other applicable rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

The request is also subject to the following time condition:

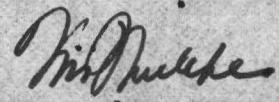
- That the Special Permit, without further action

Mr. Terence T. Yoshioka
September 1, 1978
Page 2

by the County Planning Commission and State Land Use Commission, shall be automatically nullified upon the completion of the Honokaa to Waipio State road improvement project (State Project No. 240-A-01-71). The petitioner shall be responsible for notifying the Planning Director of the termination of the project. The Planning Director shall in turn notify the County Planning Commission and the State Land Use Commission of the project termination.

In the meantime, should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely,


WILLIAM F. MIELCKE
Chairman, Planning Commission

lgy

cc State Land Use Commission
Land Use Division, DPED
Yamada and Sons

LIST OF EXHIBITS - YAMADA AND SONS, INC.

- A. Letter from petitioner's agent 6/23/78
- A-1. Application form
- A-2. Petitioner's reasons
- A-3. Petitioner's location map
- B. Departmental acknowledgement letter 6/29/78
- B-1. Memo to the agencies 6/29/78
- C. Health 7/17/78
- D. Public Works 7/5/78
- E. DOT, Land 7/6/78
- F. Fire 7/7/78
- G. Police 7/7/78
- H. Water Supply 7/13/78
- I. Letter from petitioner 7/18/78
- J. Letter to surrounding property owner - Honokaa Sugar Co.
- K. Letter to petitioner's agent 7/21/78
- K-1. Public Hearing Notice
- L. Voting Sheet - closed hearing
- L-1. Minutes 8/3/78
- L-2. Transcript 8/3/78
- M. Letter to petitioner's agent 8/4/78
- N. Letter to petitioner's agent 8/17/78
- O. Staff Background
- P. Staff Recommendation
- Q. Location Map
- R. Photographs
- S. Voting Sheet - approved to LUC
- T. Minutes 8/31/78
- U. Letter to petitioner's agent 9/1/78

NAKAMOTO, YOSHIOKA AND CHILLINGWORTH

ATTORNEYS AT LAW

ROY K. NAKAMOTO
TERENCE T. YOSHIOKA
WILLIAM S. CHILLINGWORTH

GLENN N. KIMURA

80 PAUAHI STREET, ROOM 203
HILO, HAWAII 96720

TELEPHONE
AREA CODE 808
935-7156

June 23, 1978

Department of Planning
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Re: Application for Special Permit of
Yamada & Sons, Inc.
TMK: 4-7-06:1

Gentlemen:

Enclosed herewith for processing are the following:

1. Original and 16 copies of Application for Special Permit of Yamada & Sons, Inc. regarding Tax Map Key No. 4-7-06:1;
2. 16 copies of a location map;
3. Original and 16 copies of Applicant's Reasons for Requesting Special Permit; and
4. Our check in the amount of \$100.00 for the processing fee.

We will be submitting more precise data of the location of the quarry site at a later date. We would appreciate it if you would initiate the processing at this time. All correspondence should be directed to Mr. Terence T. Yoshioka of our office, with a carbon copy to Yamada & Sons, Inc.

Very truly yours,

NAKAMOTO, YOSHIOKA & CHILLINGWORTH

By Barbara Gamsky
(Mrs.) Barbara Gamsky

Encs.

EXHIBIT A

APPLICATION FOR SPECIAL PERMIT

Luc

COUNTY OF HAWAII

PLANNING DEPARTMENT - PLANNING COMMISSION

APPLICANT: YAMADA & SONS, INC.

APPLICANT'S SIGNATURE:

ADDRESS: 733 Kanoelehua Avenue, Hilo, Hawaii

TELEPHONE: 935-2911

TAX MAP KEY: (3) 4-7-06:1

AREA: approx. 10 acres

(Size of Parcel)

OWNER: Honokaa Sugar Company

P. E. BOUVET

JUN 23 1978

OWNER'S SIGNATURE:

Vice President and General Mgr

Honoka Sugar Company

APPLICANT'S INTEREST, IF NOT OWNER: **Licensee**

REQUESTED USE: Operation of a rock crusher at the site of a quarry located on the above-identified property.

APPLICANT'S REASON(S) FOR REQUESTING SPECIAL PERMIT: (Please attach)

NOTE: The applicant must show that:

- (a) such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- (b) the desired use shall not adversely affect surrounding properties;
- (c) such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (d) unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- (e) the land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- (f) the proposed use will not substantially alter or change the essential character of the land and the present use; and
- (g) the proposed use will make the highest and best use of the land involved for the public welfare.

THIS APPLICATION MUST BE ACCOMPANIED BY:

- (a) 16 copies of the completed application form with attachments.
- (b) 16 copies of a location map.
- (c) 16 copies of a site plan with existing and proposed uses.
- (d) any additional information.
- (e) \$100.00 processing fee.

For Official Use:

Date received _____
120th day _____
Public Hearing date _____
Action date _____
To Land Use Commission _____

EXHIBIT A-1

RECEIVED

78 JUN 23 PM 3 49

PLANNING DEPT.
COUNTY OF HAWAII
FILE NO.

APPLICANT'S REASONS FOR
REQUESTING SPECIAL PERMIT

The Applicant is a Hawaii corporation engaged, *inter alia*, in the business of constructing roads and highways. Presently, the Applicant is under contract with the State of Hawaii to construct a highway from Honokaa to Waipio, being State Project No. 240 A-01-71.

Pursuant to said contract, the Applicant obtained the rights to excavate aggregates from the quarry owned and operated by Honokaa Sugar for use in the construction of the highway, and retain YS Rock of 733 Kanoelehua Avenue, Hilo, Hawaii, to operate a rock crushing machine at the quarry site for the purpose of processing the aggregates to the required size.

The quarry itself is located in an area presently zoned Agriculture (A-40a) by the County of Hawaii and constitutes a non-conforming use. The area is also designated agricultural by the State Land Use Commission.

Unbeknownst to the parties, the operation of the rock crushing machine by YS Rock was deemed to be an expansion of a non-conforming use by the County of Hawaii Department of Planning and, hence, a violation of Part 4-2(2) of the State Land Use regulations. Accordingly, a demand that the Applicant cease such activities was transmitted by the Department of Planning on April 14, 1978, and complied with by the Applicant within a reasonable period of time thereafter.

This special permit application now seeks to establish the lawful operation of the rock crushing machine at the quarry site for the duration of the Applicant's contract relating to the construction of the Honokaa to Waipio highway. In support

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PLANNING DEPT.
COUNTY OF HAWAII
FILE NO.

of the special permit request, the Applicant declares as follows:

A. THE OPERATION OF THE ROCK CRUSHER IS NOT CONTRARY TO THE OBJECTIVES SOUGHT TO BE ACCOMPLISHED BY THE LAND USE LAW AND REGULATIONS.

It is noted in Part 1-2 of the State Land Use District Regulations promulgated by the State of Hawaii Land Use Commission that the purpose of the rules and regulations is to "preserve, protect and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii."

The Applicant submits that the operation of the rock crusher would be in harmony with the above-stated purpose for the following reasons:

1. As hereinafter mentioned, the quarry site is undesirable for agricultural purposes and is best suited for its present use as a quarry. Therefore, if operation of the rock crusher were permitted at the quarry, the Commission would be encouraging and maximizing the use of the quarry.

2. The operation of the rock crusher at the quarry site would eliminate the wasteful and extravagant costs incurred in transporting the raw materials excavated from the site to and from Hilo for processing into usable aggregates. The elimination of unnecessary traffic from our public highways and the resulting fuel consumption arising therefrom would be of benefit to the public health and welfare of the people in the County of Hawaii.

B. THE DESIRED USE WILL NOT ADVERSELY AFFECT SURROUNDING PROPERTIES.

The quarry is situated in an area remote from residential neighborhoods or properties owned by parties other than Honokaa Sugar. As such, the quarry has been in continuous operation for a period in excess of fifteen (15) years without adversely affecting the use and enjoyment of adjacent property owners or residences.

To be sure, the operation of the rock crusher will result in the generation of a certain amount of dust and noise, but based on previous experience, said amount would not significantly increase the present levels to an extent noticeable by the surrounding property owners.

C. THE USE WILL NOT UNREASONABLY BURDEN PUBLIC AGENCIES TO PROVIDE ROADS AND STREETS, SEWERS, WATER, DRAINAGE, SCHOOL IMPROVEMENTS, AND POLICE AND FIRE PROTECTION.

No additional public services will be required to operate the rock crusher at the quarry site; therefore, no burdens will be placed upon the various public agencies nor will government funds be expended to accommodate the Applicant's request.

D. UNUSUAL CONDITIONS, TRENDS, AND NEEDS HAVE ARISEN SINCE THE DISTRICT BOUNDARIES AND REGULATIONS WERE ESTABLISHED WHICH JUSTIFY GRANTING OF THE SPECIAL PERMIT.

Since 1963, the approximate year when the quarry became a non-conforming use, the Honokaa Sugar Company lost its right to crush materials excavated from the quarry due to its failure to engage in such activity for a period of one (1)

continuous year. The loss of such a right through disuse was never realized by Honokaa Sugar Company until the Applicant's resumption of crushing operations on the premises. This loss presents an unusual and unexpected condition which, the Applicant submits, justifies the granting of the special permit.

E. THE LAND UPON WHICH THE PROPOSED USE IS SOUGHT IS UNSUITED FOR THE USES PERMITTED WITHIN THE DISTRICT.

As previously mentioned, the area upon which the rock crusher will be operated has been used as a quarry site for well over 15 years. The area is, thus, unsuited for agricultural purposes due to the quarrying activities.

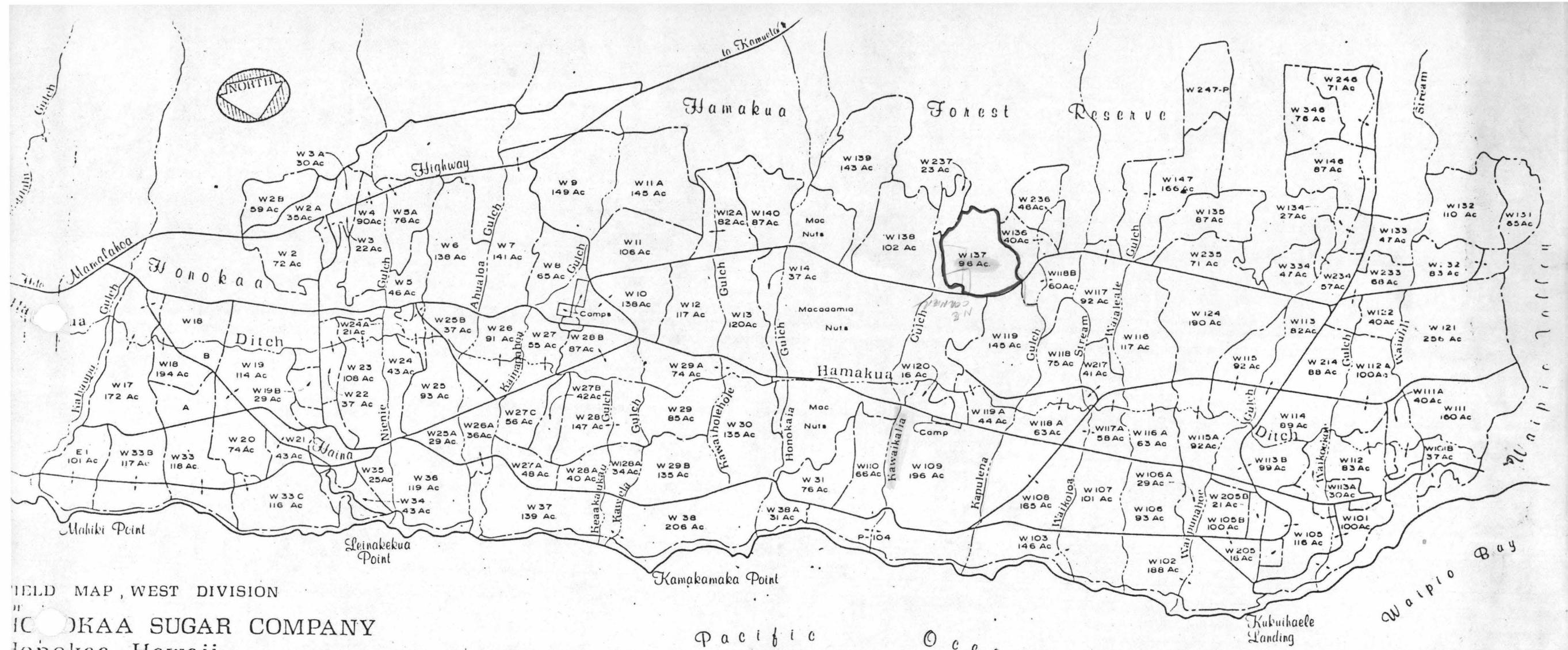
F. THE PROPOSED USE WILL NOT SUBSTANTIALLY ALTER OR CHANGE THE ESSENTIAL CHARACTER OF THE LAND AND THE PRESENT USE.

With regard to the character of the land, due to its use as a quarry, the introduction of the rock crusher would do little to affect any change thereto. Both the quarrying and crushing activities are related industrial operations which normally go hand-in-hand at other industrially zoned locations. In essence, the crushing operations would constitute a use incidental to the quarrying operations rather than a new and different use of the property.

G. THE PROPOSED USE WILL MAKE THE HIGHEST AND BEST USE OF THE LAND INVOLVED FOR THE PUBLIC WELFARE.

Since the land has been, and will continue to be, utilized as a quarry by Honokaa Sugar Company, it would appear logical and practical to allow the Applicant to maximize the present function of the property by permitting the operation

of the rock crusher thereon. The use of the rock crusher at the quarry site would enable the Applicant to meet its commitment to the State of Hawaii without undue economic hardship, and, as pointed out in Part A above, inure to the benefit of the public, as well.



FIELD MAP, WEST DIVISION

LOPOOKAA SUGAR COMPANY
Lopokaa, Hawaii

calc: $1'' = 4000 \pm$

July, 1974

Pacific

① c e a h

prepared by
TRYCK, NYMAN & HAYES, INC.
Engineering - Surveying - Photography

July 20, 1918

EXHIBIT A-3

RECEIVED

*78 JUN 23 PM 3 50

PLANNING DEPT.
COUNTY OF HAWAII
FILE NO.

June 29, 1978

Mr. Terence T. Yoshioka
80 Pauahi St., Room 203
Hilo, HI 96720

Dear Mr. Yoshioka:

Special Permit - Yamada & Sons Inc.
Operation of a Rock Crusher
TMK: 4-7-06:1

This is to acknowledge receipt on June 23, 1978 of the above described special permit application.

The County Planning Commission shall conduct a public hearing on the request within a period of not less than thirty (30) nor more than one hundred twenty (120) days from the receipt of the application. The Planning Commission shall then act on the application not earlier than fifteen (15) days after the public hearing but within a reasonable time thereafter. Should the Planning Commission recommend favorably on the request, it will then be forwarded to the State Land Use Commission for final action.

However, the Planning Commission may deny the request if it is found that the proposed use does not meet the special permit guidelines. In this case, their decision is final. In accordance with the provisions of Chapter 205-6, Hawaii Revised Statutes, a denial by the Planning Commission may be appealable to the Circuit Court of the circuit in which the land is situated, in this case, the Third Circuit Court.

Notice of the time and place of the public hearing shall be forwarded when the application is scheduled for Commission action.

Should you have any questions, please contact Ilima Piianaia or Keith Kato of this department at 961-8288.

Sincerely,

Sidney M. Fuke
SIDNEY FUKE
Director

IP:ak

cc: Yamada & Sons, Inc.
State Land Use Commission
DPED - Land Use Division

EXHIBIT B

JUN 30 1978

MEMORANDUM:

PLANNING DEPARTMENT - County of Hawaii, Hilo, Hawaii 96720

To: DPW POLICE SOIL CONSERVATION Date: June 29, 1978
DWS FIRE HEALTH
R & D HIGHWAYS DEPT. OF AGRICULTURE

From: DIRECTOR *S. H. H. K.*

Subject: Special Permit - Operation of a Rock Crusher
Yamada & Sons Inc.

TMK: 4-7-06:1

The attached application for a special permit is forwarded for your review. May we please have written comments within two weeks.

Thank you very much.

ak
Attachment

EXHIBIT B-1

JUN 30 1978

MEMORANDUM:

PLANNING DEPARTMENT - County of Hawaii, Hilo, Hawaii 96720

To: DPW POLICE SOIL CONSERVATION Date: June 29, 1978
DWS FIRE HEALTH
R & D HIGHWAYS DEPT. OF AGRICULTURE

From: DIRECTOR *Sal Atile*

Subject: Special Permit - Operation of a Rock Crusher
Yamada & Sons Inc.

TMK: 4-7-06:1

The attached application for a special permit is forwarded for your review. May we please have written comments within two weeks.

Department of Health
July 17, 1978
Hilo, HI

Authority to Construct Permit for the Crusher's air pollution emission is required by the Department of Health's Public Health Regulation, Chapter 43, Air Pollution. Dust and noise concerns need to be studied.

ak
Attachment

Harold
HAROLD MATSUURA
Chief Sanitarian, Hawaii

EXHIBIT C

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE July 5, 1978

Memorandum

TO : Planning Department

FROM : Chief Engineer

SUBJECT: Application for Special Permit

Applicant: Yamada and Sons, Inc.

Location: Honokaa, North Hilo, Hawaii

TMK: 4-7-06:1

We have reviewed the subject application and we have no comments to offer.

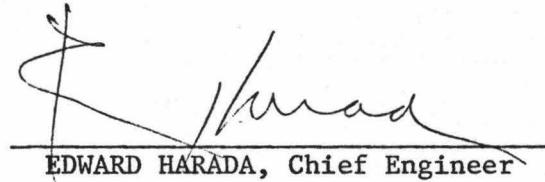

EDWARD HARADA, Chief Engineer

EXHIBIT D

GEORGE R. ARIYODHI
GOVERNOR



Ryokichi Higashionna, Ph.
XXXXXXXXXXXX
DIRECTOR

DEPUTY DIRECTORS
DOUGLAS S. SAKAMOTO
WALLACE AOKI

Charles O. Swanson

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
HAWAII DISTRICT
50 MAKALA STREET
P. O. BOX 4277
HILO, HAWAII 96720

IN REPLY REFER TO:

LT-H 78-2.780

July 6, 1978

MEMORANDUM:

TO: Director, Planning Department
County of Hawaii

FROM: District Engineer, Hawaii

SUBJECT: () Change of Zone Application
() Variance Application
() Subdivision Application No.
(x) Special Permit Application
Yamada & Sons, Inc.
TMK: 4-7-06:1

Our comments on the subject application are as follows:

1. Approval of the proposed action will benefit the general public.
2. The site has been utilized for quarrying operations in the previous years for various highway projects in the vicinity.
3. We recommend expeditious approval of the request to facilitate the completion of the highway project.

10
CHAS L. SCHUSTER

EXHIBIT E

HAWAII FIRE DEPARTMENT • COUNTY OF HAWAII • HONOLULU, HAWAII 96720

DATE July 7, 1978

Memorandum

TO : Planning Department

FROM : Hiroshi Shishido, Deputy Fire Chief

SUBJECT: SPECIAL PERMIT - OPERATION OF A ROCK CRUSHER
YAMADA & SONS, INC.

TMK: 4-7-06:1

We have no objections to the above application. The Fire Department does not foresee any major fire problems.

Hiroshi Shishido

HIROSHI SHISHIDO
DEPUTY FIRE CHIEF

HS/mo

EXHIBIT F



POLICE DEPARTMENT

COUNTY OF HAWAII
349 KAPIOLANI STREET
HILO, HAWAII 96720



OUR REFERENCE

GUY A. PAUL

YOUR REFERENCE

CHIEF OF POLICE

July 7, 1978

TO : SIDNEY FUKE, PLANNING DIRECTOR
FROM : GUY A. PAUL, CHIEF OF POLICE
SUBJECT: SPECIAL PERMIT - OPERATION OF A ROCK CRUSHER
YAMADA & SONS, INC.
TMK: 4-7-06:1

The application submitted by the above applicant has been reviewed and from the police standpoint, we can foresee no adverse effects from the requested land use.


GUY A. PAUL
CHIEF OF POLICE

HLF/RLP/k

EXHIBIT G



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

P. O. BOX 1820

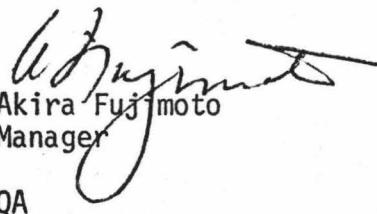
HILO, HAWAII 96720

25 AUPUNI STREET

July 13, 1978

TO: Planning Department
FROM: Manager
SUBJECT: APPLICATION FOR SPECIAL PERMIT
OPERATION OF A ROCK CRUSHER
APPLICANT - YAMADA & SONS, INC.
TAX MAP KEY 4-7-06:1

We have no objections to the subject request. For your information, the nearest public water system is about a mile away along Honokaa-Waipio road.


Akira Fujimoto
Manager

QA

... Water brings progress...

EXHIBIT H

YAMADA and SONS, INC.

Telephone: 935-2911

733 Kanoelehua Avenue — P.O. Box 4699
Hilo, Hawaii 96720

July 18, 1978

Mr. Charles L. Schuster
District Engineer
P. O. Box 4277
Hilo, Hawaii 96720

**Subject: Honokaa Waipio Road
Camp 106 to Waipio Lookout
Project No. 240A-01-71, Unit II**

Gentlemen:

We are in the process of obtaining a Special Permit for Crusher Site on Honokaa Sugar Company Land. This approval process will take anywhere from 60 to 145 days.

This Special Permit is necessary for us to set up crushing equipment in the present Honokaa Sugar Company quarry. We have been cited by the Planning Department of the County of Hawaii to desist crushing activities for Unit I of the above project until this Permit is secured.

When we first got cited we tried to work it out with the Planning Department and the Land Use Commission, but to no avail.

Therefore we ask your consideration in granting us a delay of sixty two (62) calendar days in the Notice To Proceed from July 17, 1978 to September 10, 1978.

Your favorable consideration in this matter will be greatly appreciated.

Very truly yours,

YAMADA AND SONS, INC.

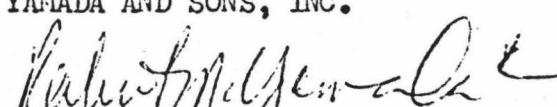

Donald K. Yamada
Vice President

EXHIBIT I



PLANNING DEPARTMENT

25 AUPUNI STREET • HILO, HAWAII 96720

COUNTY OF
HAWAII

HERBERT T. MATAYOSHI
Mayor

SIDNEY M. FUKE
Director

DUANE KANUHA
Deputy Director

July 21, 1978

Dear Property Owner: Honokaa Sugar Company

Special Permit Application
Kapulena, Hamakua, Hawaii
Tax Map Key 4-7-06:01

You are hereby notified that a request for a special permit to allow the operation of a rock crusher on approximately 10 acres of land situated within the State Land Use Agricultural District has been submitted by the petitioner, Yamada and Sons.

The property involved is located between the Kawaikalia and Kapulena gulches approximately 5,000 feet south of the Hawaii Belt Road, Kapulena, Hamakua, Hawaii.

A public hearing on the subject among others will be held beginning at 12:30 p.m. on Thursday, August 3, 1978, in the Civic Center Conference Room, Waimea, South Kohala, Hawaii.

You are invited to comment on the application at the hearing or submit written comments prior to the hearing.

Sincerely,

Sidney M. Fuke
Director

smn

Enclosure

cc: State Land Use Commission
Land Use Division, DPED

EXHIBIT J

July 21, 1978

Mr. Terence T. Yoshioka
80 Pauahi Street, Room 203
Hilo, HI 96720

Dear Mr. Yoshioka:

Notice of a Public Hearing
Special Permit Application
Yamada and Sons
Tax Map Key 4-7-06:01

This is to inform you that your request has been scheduled for a public hearing. Said hearing among others will be held beginning at 12:30 p.m. on Thursday, August 3, 1978, in the Civic Center Conference Room, Waimea, South Kohala, Hawaii.

The presence of a representative will be appreciated in order that all questions relative to the request may be clarified.

A copy of the hearing notice and agenda is enclosed for your information.

Sincerely,

Sidney M. Fuke

Sidney M. Fuke
Director

smn

Enclosure

cc: Yamada and Sons, Inc.
State Land Use Commission
Land Use Division, DPED

EXHIBIT K

JUL 21 1978

PUBLIC HEARINGS

PLANNING COMMISSION
COUNTY OF HAWAII

NOTICE IS HEREBY GIVEN of public hearings to be held by the Planning Commission of the County of Hawaii in accordance with the provisions of Section 5-4.3 of the Charter of the County of Hawaii.

PLACE: Civic Center Conference Room, Waimea, South Kohala, Hawaii

DATE: Thursday, August 3, 1978

TIME: 12:30 p.m.

The purpose of the public hearings is to afford all interested persons a reasonable opportunity to be heard on the following requests:

1. PETITIONER: YAMADA AND SONS

LOCATION: Between the Kawaikalia and Kapulena gulches approximately 5,000 feet south of the Hawaii Belt Road, Kapulena, Hamakua.

TMK: 4-7-06:01

PURPOSE: Special Permit to allow the operation of a rock crusher on 10 acres of land situated within the State Land Use Agricultural District.

2. PETITIONER: ANTONE MENDES

LOCATION: On the makai side of the old Homestead Road leading to Waimea, approximately 1.3 miles mauka of the Ka'ao Road-Hawai'i Belt Road intersection, Ahualoa Homesteads, Hamakua.

TMK: 4-6-07:68

PURPOSE: Change of zone request for six (6) acres of land from an Agricultural 5-acre (A-5a) to an Agricultural 3-acre (A-3a) zoned district.

Maps showing the general locations and boundaries of the areas under consideration and/or plans of the proposed developments are on file in the office of the Planning Department in the County Building at 25 Aupuni Street, Hilo, Hawaii, and are open to inspection during office hours. All comments should be filed with the Planning Commission before that date, or in person at the public hearing.

PLANNING COMMISSION,
WILLIAM F. MIELCKE, Chairman
By SIDNEY M. FUKE
Planning Director

(Hawaii Tribune-Herald: July 24 and August 1, 1978)

RECORD OF VOTING
PLANNING COMMISSION
County of Hawaii

Date August 3, 1978

Petitioner YAMADA AND SONS - Special Permit

Preliminary hearing Public hearing Request Action

ACTION: Approve

Deny

Defer

Continue

Schedule for public hearing

Closed

Other: _____

Commissioners	Aye	No	Excused	Abstain
FUJIMOTO, Shigeru			✓	
HANLEY, J. Walsh			✓	
JITCHAKU, Lorraine R.			✓	
MURAKAMI, Haruo			✓	
NAKANO, Bert H. <i>Mould</i>	1			
ORITA, Alfredo				
PARIS, William Jr. <i>2nd</i>	1			
SAKAMOTO, Charles				
MIELCKE, William F.				

EXHIBIT L

PLANNING COMMISSION

Planning Department
County of Hawaii

MINUTES
August 3, 1978

The Planning Commission met in regular session at 12:30 p.m. in the Civic Center Conference Room, Waimea, South Kohala, Hawaii, and at 3:06 p.m. in the Kealakehe School Cafetorium, Kealakehe, North Kona, Hawaii, with Chairman William F. Mielcke presiding.

PRESENT: William F. Mielcke	ABSENT: Shigeru Fujimoto
J. Walsh Hanley (From 3:06 p.m.)	Lorraine R. Jitchaku
Bert H. Nakano	Haruo Murakami
Alfredo Orita	
William J. Paris, Jr.	Ex-officio Member
Charles H. Sakamoto	Akira Fujimoto

Sidney M. Fuke, Director (From 2:00 p.m.)
Virginia Goldstein, Planner (From 2:00 p.m.)
Ilima Piianaia, Planner
William Moore, Planner

David Murakami, representing Ex-officio Member Edward
Harada
Lionel Meyer, Deputy Corporation Counsel

and about 17 people in attendance at 12:30 p.m., 18 people
at 3:06 p.m., 37 people at 3:47 p.m. and 14 people at
6:48 p.m.

EXHIBIT L-1

The petitioner's representative, Hajime Tanaka, stated he did not think there would be any problems with the conditions as outlined by the staff and pointed out that they were agreeable with the Department of Water Supply's comments that the remainder of the 25 lots would have to wait until the water system is improved. He added that they would have overhead electrical utilities and that he thought the Department of Hawaiian Home Lands would go along with their proposed 40-foot shoreline setback.

Under public testimony, Mr. Sonny Kaniho pointed out that although he was in favor of the subdivision, he felt a public hearing should be held with the applicants of the lots to see whether they felt the 40-foot shoreline setback proposed is sufficient. He expressed his concern on the public access to the beach. Staff informed Mr. Kaniho that if the applicants of the lots want a greater setback, they should take the matter up with the Department of Hawaiian Home Lands as it was not within the Planning Commission's jurisdiction.

It was moved by Commissioner Sakamoto and seconded by Commissioner Nakano that the public hearing be closed; motion was carried.

It was moved by Commissioner Orita and seconded by Commissioner Sakamoto that the SMA Use Permit be granted with the conditions outlined by the staff. A roll call vote was taken and motion carried with five ayes.

SPECIAL PERMIT
YAMADA AND SONS
KAPULENA, HAMAKUA Public hearing on the application of Yamada and Sons for a Special Permit to allow the operation of a rock crusher and the establishment of a quarry on approximately 20 acres of land situated within the State Land Use Agricultural District. The area involved is located between the Kawaikalia and Kapulena gulches approximately 5,000 feet south of the Honokaa-Waipio Road, Kapulena, Hamakua, TMK: 4-7-06:01.

Staff presented background on file.

Staff informed the Commissioners that the nearest residence was about a half mile away.

The petitioner's representatives, Terence Yoshioka and Robert M. Yamada, were in attendance.

Mr. Yoshioka pointed out that he did obtain an emission control clearance from the State Department of Health and Federal government for a crushing unit last year; and if it is the same unit that will be utilized, the emission control standards have been met. Mr. Yoshioka stated for the record that their request for the establishment of a quarry would have to be withdrawn as the owner of the property, Honokaa Sugar Company, felt it was not in their best interest to make such a request at this time. He added that although they do not represent Honokaa Sugar Company, Honokaa Sugar Company's position is that they feel that the request for a special permit to conduct a quarry operation is unnecessary as the operation was established before existing land use regulations and is a nonconforming use.

Staff pointed out that this did not change the application. Staff clarified the Department of Health's comments that they would have to have a permit to establish the rock crusher at the site; and added

that Yamada and Sons would have to check with the Department of Health to see that all requirements are fulfilled.

The Planning Director at this time offered some background information. He pointed out that the interpretation they have received from the State Land Use Commission was that quarry operations are allowed in the Agricultural District under a special permit and that they do recognize nonconformity. He said that the Land Use Commission's regulations provide that if they fail to utilize the quarry within a year's period continuously, then the operation ceases; and that the Planning Department has had some difficulty in determining what constitutes an expansion of an existing quarry as it also provides that they have the right to enjoy the use, but cannot expand it. Mr. Fuke said that the State Land Use Commission subsequently advised the Department that if there is any expansion laterally, that would technically be considered an expansion. Therefore, the Planning Department has, in the past, notified all individuals or developers that have quarries around the island to come in for a special permit to legitimize their existence and, more importantly, to clearly outline where the boundaries of the quarry would be. Mr. Fuke said the Land Use Commission had also advised the Department that while they do have a right to continue the operation, if a new item such as a rock crushing operation, which to some extent changes the complexion of the use from just excavation, then that technically constitutes an expansion.

Mr. Yoshioka agreed with Mr. Fuke that Honokaa Sugar Company's position is that they do not believe that what is being done now constitutes an expansion of a nonconforming use, and added that Honokaa Sugar Company does not want to be bound by any request that Yamada and Sons might make to define the physical boundaries of the operation as Honokaa Sugar will handle the problem themselves when the time comes, and take the responsibility of determining the extent of the use of the quarry.

Mr. Fuke informed the Commissioners that the quarry as it exists today is a legitimate operation; however, the problem would come about if Honokaa Sugar Company decides to increase the acreage involved in the quarry operation, as it would technically constitute an expansion of a nonconforming use which would not be allowed by the Land Use Commission.

For the Commissioner's information, Mr. Yoshioka stated that the primary purpose of their request is to use the materials for the construction of the Honokaa to Waipio Road; however, any excess materials will be sold. Mr. Yamada pointed out that the estimated completion date for the project is a year for two increments, and requested that the Planning Commission expedite this matter and send a favorable recommendation to the State Land Use Commission.

Under public testimony, Mr. Al Larue and James MacClean spoke against the request as they felt there was not enough business in the area to warrant another rock crushing operation. In response to the testimonies, Mr. Yoshioka clarified that the petitioner's intent is not to establish a business of supplying rocks to people, but to allow the processing to complete a project; however, if there are any excess materials, then it would be sold. He said if there is a concern

with regard to competition that the sale of these aggregates would pose to the parties, Yamada and Sons would be willing to use the crushed material only for the construction of the highway.

The Chair at this time pointed out that the question before the Commission is whether to allow the use of a rock crusher in an existing nonconforming quarry during the term of the contract for the construction of the Honokaa to Waipio Road.

In response to Mr. David Ramos' question, the Chair stated that the petitioner would have to comply with the Department of Health's regulations and requirements.

It was moved by Commissioner Nakano and seconded by Commissioner Paris that the public hearing be closed; motion was carried.

CHANGE OF ZONE Public hearing on the application of Antone Mendes
ANTONE MENDES for a change of zone for six (6) acres of land
AHUALOA HOMESTEADS, from an Agricultural 5-acre (A-5a) to an Agri-
HAMAKUA cultural 3-acre (A-3a) zoned district. The property
 involved is located on the makai side of the old
Homestead Road leading to Waimea, approximately 1.3 miles mauka of
the Ka'ao Road-Hawaii Belt Highway intersection, Ahualoa Homesteads,
Hamakua, TMK: 4-6-07:68.

Staff presented background on file.

The Chair pointed out that the Commission has had an opportunity to review the entire file of the appeal case and that staff did recommend denial but the Board of Appeals has sustained the appeal.

The petitioner, Antone Mendes, said he had nothing to add for the Commissioner's information.

The petitioner's son, Eugene Mendes, stated that the intent is to subdivide the 6 acres between two sons and continue the agricultural use. He said he felt that they would be able to get more production by subdividing the land. For the Commission's information, he stated that he plans to have at least cattle and probably some type of crop such as macadamia nuts or guavas.

There was no one from the public testifying on the application.

It was moved by Commissioner Paris and seconded by Commissioner Orita that the public hearing be closed; motion was carried.

It was moved by Commissioner Paris and seconded by Commissioner Nakano to send a favorable recommendation to the County Council with the following considerations and conditions:

Considerations:

- 1) That the proposed 3-acre lots can support agricultural use.
- 2) That the subject property is presently in agricultural use and will continue to be used for agriculture.

PLANNING COMMISSION

Planning Department
County of Hawaii

HEARING TRANSCRIPT
August 3, 1978

A regularly advertised public hearing, on the application of Yamada and Sons, was called to order at 1:01 p.m. in the Civic Center Conference Room, Waimea, South Kohala, Hawaii, with Chairman William F. Mielcke presiding.

PRESENT: William F. Mielcke	ABSENT: Shigeru Fujimoto
J. Walsh Hanley	Lorraine R. Jitchaku
Bert H. Nakano	Haruo Murakami
Alfredo Orita	
William J. Paris, Jr.	Ex-officio Member
Charles H. Sakamoto	Akira Fujimoto

Sidney M. Fuke, Director
Virginia Goldstein, Planner
Ilima Piianaia, Planner
William Moore, Planner

David Murakami, representing Ex-officio Member Edward
Harada
Lionel Meyer, Deputy Corporation Counsel

and approximately 13 people in attendance

CHAIRMAN: Item two on the agenda is the public hearing on the application of Yamada and Sons for a Special Permit to allow the operation of a rock crusher and the establishment of a quarry on approximately 20 acres of land situated within the State Land Use Agricultural District. The area involved is located between the Kawaikalia and Kapulena gulches approximately 5,000 feet south of the Honokaa-Waipio Road, Kapulena, Hamakua, TMK: 4-7-06:01. Staff?

PIIANAIA: (Presented background on file.)

CHAIRMAN: Thank you, Ilima. Commissioners, do you have any questions on the staff's background report? Yes, Commissioner Sakamoto.

SAKAMOTO: Ilima, what's that white square right next to that quarry?

PIIANAIA: There are three white blocks in there and those are all forest reserves.

SAKAMOTO: Forest reserves?

PIIANAIA: Yes.

EXHIBIT L-2

SAKAMOTO: Thank you.

CHAIRMAN: Where is the nearest residence?

PIIANAIA: It's not shown on the map, but it's about a half mile away.

CHAIRMAN: Okay. Commissioners, any further questions of the staff? Is the applicant or a representative of the applicant present?

YOSHIOKA: Yes.

CHAIRMAN: Mr. Yoshioka, do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

YOSHIOKA: I do.

CHAIRMAN: Please state your name into the microphone.

YOSHIOKA: I'm Terence Yoshioka and I'm acting as legal representative for the applicant and I'm appearing here today together with Robert Yamada who's also representing the applicant.

CHAIRMAN: Thank you, Mr. Yoshioka. You've heard the staff's background report on your Special Permit application, do you have anything that you'd like to add for the benefit of the Commission?

YOSHIOKA: Yes. Some points, I think, need to be made. With regard to the operation of the rock crusher and perhaps Mr. Yamada can correct me. I did some work previous to this, last year, in obtaining a clearance from the Department of Health and the Federal government for the emission controls for a particular unit. So I believe that all requirements of the Department of Health may have been met. I may be mistaken. We may be talking about a different unit. But if it's the same unit that's being utilized, emission control standards have been met.

Secondly, the notice of the permit provides for a request for the operation of a rock quarry on the subject premises, and I would have to say with regard to that request, we would have to have that withdrawn because I've consulted with Honokaa Sugar the owner of the property, with regard to a request for the establishment of a rock quarry and they felt it was not in their best interest to make such a request at this time. As such, we are simply asking for the right to engage in the rock crushing operation at the already established quarry site. It is the position of Honokaa Sugar that a request for a Spermit Permit to conduct quarrying operations is unnecessary because they have been doing so since this area was rezoned and since it became a nonconforming use. So I have to make that statement for the record.

CHAIRMAN: Does it change -?

PIIANAIA: No, that doesn't change the application. To clarify Mr. Yoshioka's first remark on the Department of Health's comments, I think what the Department of Health is saying that to establish

the rock crusher at that site you need a permit; but you'd have to check with them to see that all their requirements would be fulfilled.

YOSHIOKA: Okay.

CHAIRMAN: Mr. Yoshioka, do I understand now that Honokaa Sugar has no intention to use the quarry after Mr. Yamada is finished with the construction of the road?

YOSHIOKA: No, I don't think that's correct. They do intend to use it; however, it's their position, and I hate to stand here as a representative of Honokaa Sugar because I am not one, but if I may be allowed an opportunity to explain their position as explained to me by Mr. Robert Evans, the engineer of Honokaa Sugar, they feel that they are already operating a quarry and that that quarry was being operated as of the date when the land was rezoned. And as such, it is a nonconforming use and they do not want us, in our application, to represent them in asking for a Special Permit for the operation of a quarry, which they feel they are entitled to.

PIIANAIA: The quarry has been considered as a nonconforming use; however, under the State Land Use Regulations, if a nonconforming use of land ceases for one year, then they cannot reestablish that use except through Special Permit.

CHAIRMAN: Mr. Director.

FUKE: Mr. Yoshioka, what about the rock crusher operation? Would Honokaa Sugar have any objections to continuing the rock crushing operation after your client leaves that area?

YOSHIOKA: No. I don't think they would have any objections to that.

FUKE: So the intent is to, well, Honokaa Sugar would have no objection to supporting the concept of a rock crusher within the quarrying operation, but they do object to your representing them to legitimize the quarry?

YOSHIOKA: That's correct, or to define the extent of the quarry.

FUKE: Okay. Mr. Chairman, if I may just give a little background. The Land Use Commission, the Land Use Law, the interpretation that we received from the Land Use Commission was that quarrying operations are allowed in the agricultural district under a Special Permit. Now they do recognize nonconformity. They do also provide that the laws, the regulations provide that if you fail to utilize the quarry within a year's period continuously, then the quarrying operation ceases. We have had some difficulty as far as what constitutes an expansion of an existing quarry. Now the Land Use Law also provides that you have the right to enjoy the use of the quarry but you cannot expand it. So the problem became to what extent, when you excavate additional area, would that constitute an expansion. The Land Use Commission had advised us that if there are any expansion by digging out more land area, that that would technically be considered an expansion.

Therefore, what we have done in the past is to notify all individuals or developers that have quarrying around the island to come in for a Special Permit to legitimize existence of the quarry and, more importantly, to clearly outline where the boundaries of the quarry would be. This was done in subsequent petitions for, I guess, like the Parker Ranch, the various plantations around.

The Land Use Commission has also advised that while you do have the right to continue like the quarrying, if you introduce a new item such as a rock crushing operation, which to some extent changes the complexion of just excavation, then that technically constitutes an expansion. And this is why Mr. Yoshioka, in behalf of Mr. Yamada, is here today.

So, if I understand you correctly, Terry, what you're saying is that Honokaa Sugar Company's position is just that a quarry is over there and whether to excavate additional area, they don't believe that that constitutes an expansion of a nonconforming use?

YOSHIOKA: That's essentially, I think, their position. And they don't want to be bound by any request that we might make to define the physical boundaries of that quarry operation. They themselves will handle the problem if and when any action is taken to define those boundaries. And they would like to be responsible themselves for determining to what extent they may utilize the quarry. And as Sidney pointed out, really what we are asking for right now is to extend the use of the quarry to the rock crushing operation as well. I might point out that as part of the quarrying operation, Honokaa Sugar has for all these years utilized the quarry by excavating the materials and screening those materials; and what we have been doing in order to obtain aggregates of suitable size is to continue the screening process. However, we would also like the right to reduce larger aggregates into usable size.

CHAIRMAN: I understand what you're saying Mr. Yoshioka, and I think my question is for the staff. The quarry as it exists today, is it a legitimate operation?

FUKE: The quarry as it exists today is a legitimate operation. The problem, however, would come about when if, maybe not in this case Mr. Yamada, but maybe if Honokaa Sugar decides to increase the acreage involved in the quarrying operation, then that technically would constitute an expansion of a nonconforming use, and that would not be allowed.

Now I did have discussions with Mr. Yoshioka just when this Special Permit was being placed on the agenda and asked him to, you know, once and for all, let's just establish the quarry so there won't be any hassles in the future. This he had agreed and he had apparently discussed it at that point in time with Honokaa Sugar. But now, I guess, they do have some reservations over the initial decision. So technically what is before the Commission right now in light of Mr. Yoshioka's statement is really to allow the operation of a rock crusher on an existing quarry on land situated within the State Land Use Ag District.

CHAIRMAN: Commissioner Sakamoto.

SAKAMOTO: Mr. Yoshioka, how many days a week are you going to use the crusher?

YOSHIOKA: I believe it's five working days a week would be the normal use of the rock crusher.

SAKAMOTO: But in case of, now, Mr. Yamada have that crusher now, what if Honokaa Sugar wants to use some of the materials?

YOSHIOKA: He is paying them a commission for the materials that are excavated. So I don't think that they'll be so free with their use, and it is needed for the construction of the highway.

CHAIRMAN: I had a similar question. Are the materials going to be used just for the construction of the highway? He's not going to be selling materials to other people?

YOSHIOKA: No, primarily for that purpose. But whatever else they can excavate, excess materials, then they'll be using it for resale if they don't have any other projects that they can use it for. Transportation is a problem, of course. If they had to transport the material to sites which are too far away to be economically feasible, then what they would attempt to do is to establish quarry sites closer to the project and for the excess materials that are remaining, then they would attempt to dispose of it through resale.

CHAIRMAN: Mr. Yoshioka, how long is the project in question going to take, the construction of the road that you specifically refer to?

YOSHIOKA: Perhaps Mr. Yamada can best answer that.

CHAIRMAN: Mr. Yamada, we'll have to ask you to come up to the microphone, and we will swear you in. Please raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

YAMADA: Yes, I do.

CHAIRMAN: For the record, it's Mr. Robert Yamada, Madam Secretary.

YAMADA: Yes, my name is Robert Yamada, president of Yamada and Sons, and YS Rock. YS Rock is doing the supplying of the rock to YS, Inc. This project here was purely set up to furnish materials for increment one, the road from, I say, from Honokaa to Waipio. I think most of you know that there is a plan to build a road right around the Waipio Valley to come up and meet Mudlane, and these are the two increments. And the first increment should be completed in the month of October; and the second increment, we have about ten months to complete the second increment. In other words, it would be about a year; and within a year's time, we'll complete the two increments.

CHAIRMAN: Thank you, Mr. Chairman. Commissioners, do you have any questions of the applicant or his representative? There does not appear to be any questions from the Commission, Mr. Yamada. We do ask that you and Mr. Yoshioka remain in the audience as this is a public hearing and we will be asking the audience if they have any questions.

YAMADA: Yeah, okay, before I sit down, I really don't know, Mr. Chairman, whether I'll have a chance to speak or not. But I do appreciate this Board here, if possible, to expedite because it's holding up the project and makes it's very difficult to complete this project. In the first place, although I was, been accused of being a councilman and not knowing all the rules, but, Mr. Chairman, you know that in the County, it's so complex, especially the Planning Commission. I can't get to know every detail of the rules and regulations, and it changes, too. And we have many others, from the Finance, Public Works, Parks and Recreation, and all of that. So these are some of the things that I overlooked. And I thought because it was an established quarry, plantation claim that they've been quarrying there as long as they remember, and I thought the only thing we should do is to take our crusher, take the materials, and crush, and use on the construction of a public highway. And this is the situation. There was no intent of violating any rules and regulations. So if this Board can expedite and send it to the Land Use Commission for approval so that it would be legitimate for us to crush and complete the highway as soon as possible will be greatly appreciated.

CHAIRMAN: Okay, thank you, Mr. Yamada. Ladies and gentlemen, this is a public hearing on the application of Yamada and Sons for a Special Permit to allow the operation of a rock crusher on an existing quarry on approximately 20 acres of land situated within the State Land Use Agricultural District.

The Chair at this time would like to invite anyone from the audience who would like to testify either for or against the application before the Commission. Yes, sir, if you'd come forward please. Please raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

LARUE: I do.

CHAIRMAN: Would you state your name into the microphone.

LARUE: Al Larue and I have a quarry here on the old Ahualoa Road. And I brought it in here because the prices from Hilo were too high and I've sold to the community at reasonable prices for the last, over seven years. And there hasn't been enough business to warrant another crusher coming in here. The best I've done is 30,000 yards in one year. Its usually been between 20 and 30 at the most. The first six months, there's only 7,119 yards went out. Now it's picking up a little bit again. If another crusher comes in competition, it'll break me. And I have almost \$400,000 invested in there already, and I don't think there should be another crusher in competition so close cause we have a competitor not too far away already.

CHAIRMAN: Commissioners, do you have any questions of Mr. Larue who stated that he is against the application, doesn't feel that an additional crusher is needed in this area?

SAKAMOTO: I have one.

CHAIRMAN: Commissioner Sakamoto.

SAKAMOTO: Mr. Larue, where is your crusher located?

LARUE: It's on the old Ahualoa Road from Lakeland to Honokaa.

SAKAMOTO: Do you supply your crushed rocks to all individuals?

LARUE: I supply to everybody, all the contractors and all the individuals that come by, yes.

CHAIRMAN: Commissioners, any further questions of Mr. Larue? Thank you. If there are no further questions, the Chair at this time would also -. Yes, sir, would you come forward. Would you raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

McCLean: I do.

CHAIRMAN: Would you state your name into the microphone please.

McCLean: My name is James McClean.

CHAIRMAN: Mr. McClean, please proceed.

McCLean: Yes, I represent West Hawaii Concrete which also has a quarry not nearly as close to the project but in the general vicinity, which is by Saddle Road; and I just question the idea that we bring in another rock crusher because as Mr. Larue stated there has been a very small amount of business in this area and we've all been hurting for many, many years; and to bring another crusher in to compete would just be very difficult for us.

This particular project, I would imagine, would be closer to Mr. Larue's quarry, but the fact that you take a whole piece of pie and cut it up and split it up and spread it among everybody and it gets rather thin when you cut it down that way. So I just question this idea of crushing this rock and selling it on outside jobs which they have indicated they might do, as well as supplying materials for this particular road. Everyone that bids on a job, expect to bring rocks in. When they were going to build the road, everybody bid on a job based on we were going to bring rocks in either from Hilo, or from Mr. Larue's quarry. And now to go ahead and try to bring the rocks in from an adjacent quarry to the project is different than what the original idea was. So I feel that this is something that is coming along after the job is bid and it is cutting away from the people of the area that are trying to have a living on this kind of business.

CHAIRMAN: Commissioners, any questions of Mr. McClean?

SAKAMOTO: I have one, not for Mr. McClean, but one for Mr. Yoshioka.

CHAIRMAN: Okay, any questions for Mr. McClean? Okay, Mr. McClean, your testimony is so noted. Thank you.

Mr. Yoshioka, Commissioner Sakamoto has a question for you.

SAKAMOTO: Mr. Yoshioka, you said that this crusher, you're going to use the rocks strictly for the road, right?

YOSHIOKA: Well, the intent was to use all of the rocks that were obtained from the quarry for use at this project because he cannot, economically speaking, it would not be feasible to transport the rocks to other sites for use. The cost of transportation would be too great.

In response to the objections posed by the two gentlemen before me, I'd like to point out that I would or could sympathize with their plight. However, what we are trying to do is not to, shall I say, create a new supply of rocks. The quarry has already been there for well over 15 years. It's been available as a source of supply for aggregates. We are not creating a new supply. All we are doing is to allow the processing of the rocks at the quarry site rather than going through the extensive procedure of transporting it back to Hilo for processing. I would imagine that, with regard to these two gentlemen that, when their bids, if any were submitted for this road site, that the bids were premised upon the rocks coming from their quarry site rather than transporting it from Hilo.

And if there is a concern with regard to the competition that the sale of these aggregates would pose to these other parties, we would be willing to restrict the use of the aggregate to the construction of the highway.

CHAIRMAN: Yes, please come forward because we are recording the proceedings today; and for the record, it's Mr. McClean speaking.

McCLean: First of all, are you going to crush only rocks excavated from the project site or are you going to crush rocks from the quarry site?

YAMADA: From the quarry site.

McCLean: From the quarry site. So therefore you're going to take rocks out of the quarry; and, is it my understanding that this quarry is a permissible, is a usable quarry at this time?

CHAIRMAN: That is correct.

McCLean: And it is available to excavate rocks without, that's an applicable -?

CHAIRMAN: That is correct.

McCLean: Okay, and the other question I had was, okay, now Honokaa Sugar has been excavating rocks on this quarry for many, many years, have they used these rocks for anything other than the purpose than their own particular roadways?

CHAIRMAN: I don't think that Mr. Yoshioka is in a position to answer that question, Mr. McClean.

McCLean: Well, I would like to say that I would imagine, and I don't know that the rocks being taken from the quarry was used for projects on their own particular private roadways, not on a public roadway. And so, therefore, it's a new use that is being used in this quarry. In other words, it's a quarry that Honokaa Sugar used to excavate rocks to maintain their own roadways, not to go and use on public jobs or to be used by a contractor for a different use.

Chairman: Are you stating that as a matter of fact, or is that a matter of assumption, Mr. McClean?

McCLean: It's a matter of assumption.

Chairman: Oh, I hope you're not purposely trying to mislead the Commission.

McCLean: No, I would like to say that Honokaa Sugar is not a contracting company, therefore, I don't think, or I don't know, but I don't think that they have used these rocks in contracting jobs other than maintaining their own roads, which all sugar companies have their own quarries and use; therefore, it's for their own particular use.

Chairman: Yes, I don't think that's a question really before the Commission at this time, Mr. McClean. Thank you. Mr. Yoshioka.

Yoshioka: May I just respond to that one point that he made. I don't believe that it's really relevant whether or not the plantation is utilizing the rocks for its own use or for others. It would be like saying that if at the time that your particular quarry was established and you sold only to contractors that, therefore, if some else other than a contractor, residential owner came to you and said I want to buy rocks, then therefore you're precluded from quarrying activities to sell to the residential owner. The use of the site is what is important. If it's permissible to quarry, then it really has no bearing as to whether or not it's for own consumption or for sale to one individual or to the other.

NAKANO: Mr. Chairman?

Chairman: Yes, Commissioner Nakano.

NAKANO: I have a question. Is this a portable crusher that you're talking about?

Yoshioka: Well, it's portable in a sense that it can be moved from place to place; but it's about 120 feet long and it's several tons.

NAKANO: Well, the question is, is this portable, it's mounted on wheels?

Yoshioka: Yes.

Chairman: Yes, Mr. Yamada, please come forward.

YAMADA: I just want to inform the Board Members that this is not the first time that the Honokaa Sugar sold the material. We're paying royalty to Honokaa. We built two segments of the Honokaa-Waipio and all our materials came from Honokaa pit. So this is not the first time. But this is the first time we are required to get a permit to establish the crusher. I think in those days we didn't need no permit. So we just went in and crushed and used on a highway. So this is our fourth increment that we're working in the Honokaa area. I just want to correct that because it's not the first time.

CHAIRMAN: Okay.

YAMADA: And I'd also like to mention that I'm sure all of you know that the State requirements are very strict and all the requirements have to be met, otherwise you can't use the material. And some of the problems that, other people, supplies, it has to meet their specs and I'm not positive whether their specs will meet. And also the distance, all down hill and moreso, James' quarry is about ten miles away from Waimea, and it's almost impossible, economically, it's impossible. I can understand his concern. But that's the situation.

CHAIRMAN: Okay, thank you, Mr. Yamada. Yes, Mr. Larue.

LARUE: You know Bob says he used it two times for the roads, that's the disadvantage against the other contractors to start with. Because he hauls from Honokaa and he's the only man who can get the materials from Honokaa.

CHAIRMAN: Well, I don't think the Commission is going, you know, we appreciate the concerns over the economy in the area. I think one of the basis of free enterprise is competition. I'm not speaking for the Commission at this time. And the question before us is whether a rock crusher can be used in this existing quarry, that is really what we are considering at the present time. It is a land use question.

LARUE: You're going to break somebody because you want it all in. That what it amounts to. You get too many crushers on one site, well, somebody's going to go down the drain.

CHAIRMAN: Mr. Larue, it's not the Commission's intent to break anybody in terms, using those words. Again, the question before the Commission is one of land use and the question that is being considered is whether a crusher may be used in an existing quarry. That is really what we are considering.

Is there any further testimony to come before the Commission.

FUKE: May I say something?

CHAIRMAN: Sure. Mr. Director.

FUKE: Mr. Yoshioka, can I just clarify again the application. The application is really to allow the operation of a rock crusher on an existing nonconforming quarry on lands situated within the State Land Use Agricultural District, is that in a nutshell what the requested use is?

YOSHIOKA: Yes.

FUKE: Is it also the intent to have the rock crusher operate in perpetuity or in conjunction with the quarrying operation or are you looking at more of, maybe a stipulated time period, or like a temporary use permit for the rock crushing operation, wherein after the project is through that the rock crushing operation would terminate?

YOSHIOKA: Insofar as our needs are concerned, we are only interested in operating the rock crusher during the term of construction. As far as Honokaa Sugar is concerned, I'm quite sure that they would welcome the right to continue the crushing operations, if and when they decide to bring in their own crusher. But insofar as our purposes are concerned, we would be happy with a permit, a special permit, for the duration of the construction.

FUKE: But at this point in time, you can't speak on behalf of Honokaa Sugar?

YOSHIOKA: No, I cannot, that's right.

FUKE: But for you and your client's interest, your interest is just for the duration of this particular project?

YOSHIOKA: Yes. I have to say that because in our application, we do make application for the Special Permit during the term of construction, and Honokaa Sugar approved it on that basis. Anything more than that I would not be able to represent on their behalf.

CHAIRMAN: Okay. Commissioners, you're all clear on that now? We're talking about the use of the rock crusher in an existing nonconforming quarry during the term of the contract for the construction of the road. Okay, are there any further questions of the applicant or does anyone else in the audience wish to testify either for or against the application?

Yes, Sir. Would you raise your right hand. Do you swear to tell the truth and nothing but the truth on this application now before the Hawaii County Planning Commission?

RAMOS: I do.

CHAIRMAN: Please state your name into the microphone.

RAMOS: My name is David Ramos from Parker Ranch.

CHAIRMAN: Yes, Mr. Ramos.

RAMOS: I would just like to ask the Commission one question; and, that is, if approval is granted, would it be subject to the Board of Health's study on noise and air pollution?

CHAIRMAN: Yes, it would. Any further testimony to come before the Commission? If there's no further testimony to come before the Commission, the Chair will entertain a motion either to continue the public hearing or a motion to close the public hearing. What is your pleasure?

NAKANO: Mr. Chairman, I move that the public hearing be closed.

CHAIRMAN: Is there a second to the motion?

PARIS: I second the motion, Mr. Chairman.

CHAIRMAN: It has been moved by Commissioner Nakano and seconded by Commissioner Paris that the public hearing be closed. All those in favor so signify by saying aye?

COMMISSIONERS: Aye.

CHAIRMAN: Oppose, same sign? The public hearing is closed.

Public hearing adjourned at 1:45 p.m.

Respectfully submitted,

Sharon M. Nomura

Sharon M. Nomura
Secretary

A T T E S T:

W.F. Mielcke

William F. Mielcke
Chairman, Planning Commission

August 4, 1978

Mr. Terence Yoshioka
Nakamoto, Yoshioka & Chillingworth
80 Pauahi Street, Room 203
Hilo, Hawaii 96720

Dear Mr. Yoshioka:

Special Permit Application
Petitioner: Yamada and Sons
Tax Map Key 4-7-06:01

The Planning Commission at its meeting of August 3, 1978, held a duly advertised public hearing on the above application for a special permit to allow the operation of a rock crusher and the establishment of a quarry on approximately 20 acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakua, Hawaii.

In accordance with the provisions of Section 205-6, Hawaii Revised Statutes, the Commission shall act on such petition not earlier than fifteen (15) days after the said public hearing.

We shall notify you when the Commission is ready to take action on your request.

Sincerely,



WILLIAM F. MIELCKE
Chairman, Planning Commission

lgy
cc Yamada and Sons
State Land Use Commission
Land Use Division, DPED

EXHIBIT M

August 17, 1978

Mr. Terence T. Yoshioka
80 Pauahi Street, Room 203
Hilo, HI 96720

Dear Mr. Yoshioka:

Special Permit Application
Yamada and Sons, Inc.
Tax Map Key 4-7-06:01

The above application will again be discussed on Thursday, August 31, 1978, by the Planning Commission. The meeting will be held in the Conference Room, Waimea Civic Center, Waimea, South Kohala, Hawaii, and is scheduled to begin at 4:30 p.m.

You will be notified of the Commission's decision.

A copy of the agenda is enclosed for your information.

Sincerely,
Sidney M. Fuke

Sidney M. Fuke
Planning Director

smn

Enclosure

cc: State Land Use Commission
Land Use Division, DPED
Yamada and Sons, Inc.

EXHIBIT N

AUG 17 1978



PLANNING DEPARTMENT

25 AUPUNI STREET

COUNTY OF HAWAII

HILO, HAWAII 96720

Photographs

EXHIBIT ~~R~~ R





SPECIAL PERMIT: YAMADA AND SONS, INC.

The petitioner, Yamada and Sons, Inc., is requesting a Special Permit to allow the establishment of a quarrying and crushing operation on approximately (20) acres of land within the State Land Use Agricultural District. The property involved is located between the Kawaikalia and Kapulena gulches approximately 5,000 feet south of the Honokaa-Waipio Road, Kapulena, Hamakua, (TMK: 4-7-06:01).

The subject property is owned by the Honokaa Sugar Company. The petitioner, Yamada and Sons, Inc., has secured a lease from the owner to utilize the subject area for quarrying and crushing operations. This quarry had been in operation prior to establishment of the State Land Use Law and Regulations, and has continued to exist as a non-conforming use. Further, expansion of a non-conforming use is not permissible under the State Land Use Regulations. For this reason, the petitioner is seeking to legitimize the quarry use through this Special Permit request. In addition to the quarry, the petitioner is requesting that a rock crusher operation also be approved.

According to the Soil Conservation Service Soil Survey dated December 1973, soil on the subject property is of the Kukaiau series. In a representative profile the surface layer is very dark grayish-brown silty clay loam about 10 inches thick. The subsoil is dark-brown silty clay loam about 40

EXHIBIT O

inches thick. It is underlain by basalt. Permeability is rapid, runoff is rapid, and the erosion hazard is severe on the steeper slopes.

Surrounding land uses include sugar and macadamia plantings. The closest dwelling is located approximately one-half mile from the quarry site. Access to the quarry is off a plantation road which has a minimum pavement width of twenty (20) feet.

The subject property is currently zoned by the County of Hawaii as Agricultural - 40 acre (A-40a).

In support of the subject request the petitioner has stated, in part, the following:

(SEE ATTACHMENT A)

Upon review of the subject request, the State Department of Transportation, Highways Division, commented as follows:

- "1. Approval of the proposed action will benefit the general public.
- "2. The site has been utilized for quarrying operations in the previous years for various highway projects in the vicinity.
- "3. We recommend expeditious approval of the request to facilitate the completion of the highway project."

The Department of Water Supply stated: "We have no objections to the subject request. For your information, the nearest public water system is about a mile away along the Honokaa-Waipio Road."

APPLICANT'S REASONS FOR
REQUESTING SPECIAL PERMIT

The Applicant is a Hawaii corporation engaged, *inter alia*, in the business of constructing roads and highways. Presently, the Applicant is under contract with the State of Hawaii to construct a highway from Honokaa to Waipio, ~~being State Project No. 240 A-01-71.~~

Pursuant to said contract, the Applicant obtained the rights to excavate aggregates from the quarry owned and operated by Honokaa Sugar for use in the construction of the highway, and retain YS Rock of 733 Kanoelehua Avenue, Hilo, Hawaii, to operate a rock crushing machine at the quarry site for the purpose of processing the aggregates to the required size.

The quarry itself is located in an area presently zoned Agriculture (A-40a) by the County of Hawaii and constitutes a non-conforming use. ~~The area is also designated agricultural by the State Land Use Commission.~~

Unbeknownst to the parties, the operation of the rock crushing machine by YS Rock was deemed to be an expansion of a non-conforming use by the County of Hawaii Department of Planning and, hence, a violation of Part 4-2(2) of the State Land Use regulations. Accordingly, a demand that the Applicant cease such activities was transmitted by the Department of Planning on April 14, 1978, and complied with by the Applicant within a reasonable period of time thereafter.

This special permit application now seeks to establish the lawful operation of the rock crushing machine at the quarry site for the duration of the Applicant's contract relating to the construction of the Honokaa to Waipio highway. In support

of the special permit request, the Applicant declares as follows:

A. THE OPERATION OF THE ROCK CRUSHER IS NOT CONTRARY TO THE OBJECTIVES SOUGHT TO BE ACCOMPLISHED BY THE LAND USE LAW AND REGULATIONS.

It is noted in Part 1-2 of the State Land Use District Regulations promulgated by the State of Hawaii Land Use Commission that the purpose of the rules and regulations is to "preserve, protect and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii."

The Applicant submits that the operation of the rock crusher would be in harmony with the above-stated purpose for the following reasons:

1. As hereinafter mentioned, the quarry site is undesirable for agricultural purposes and is best suited for its present use as a quarry. Therefore, if operation of the rock crusher were permitted at the quarry, the Commission would be encouraging and maximizing the use of the quarry.

2. The operation of the rock crusher at the quarry site would eliminate the wasteful and extravagant costs incurred in transporting the raw materials excavated from the site to and from Hilo for processing into usable aggregates. The elimination of unnecessary traffic from our public highways and the resulting fuel consumption arising therefrom would be of benefit to the public health and welfare of the people in the County of Hawaii.

B. THE DESIRED USE WILL NOT ADVERSELY AFFECT SURROUNDING PROPERTIES.

The quarry is situated in an area remote from residential neighborhoods or properties owned by parties other than Honokaa Sugar. As such, the quarry has been in continuous operation for a period in excess of fifteen (15) years without adversely affecting the use and enjoyment of adjacent property owners or residences.

To be sure, the operation of the rock crusher will result in the generation of a certain amount of dust and noise, but based on previous experience, said amount would not significantly increase the present levels to an extent noticeable by the surrounding property owners.

C. THE USE WILL NOT UNREASONABLY BURDEN PUBLIC AGENCIES TO PROVIDE ROADS AND STREETS, SEWERS, WATER, DRAINAGE, SCHOOL IMPROVEMENTS, AND POLICE AND FIRE PROTECTION.

No additional public services will be required to operate the rock crusher at the quarry site; therefore, no burdens will be placed upon the various public agencies nor will government funds be expended to accommodate the Applicant's request.

D. UNUSUAL CONDITIONS, TRENDS, AND NEEDS HAVE ARISEN SINCE THE DISTRICT BOUNDARIES AND REGULATIONS WERE ESTABLISHED WHICH JUSTIFY GRANTING OF THE SPECIAL PERMIT.

Since 1963, the approximate year when the quarry became a non-conforming use, the Honokaa Sugar Company lost its right to crush materials excavated from the quarry due to its failure to engage in such activity for a period of one (1)

continuous year. The loss of such a right through disuse was never realized by Honokaa Sugar Company until the Applicant's resumption of crushing operations on the premises. This loss presents an unusual and unexpected condition which, the Applicant submits, justifies the granting of the special permit.

E. THE LAND UPON WHICH THE PROPOSED USE IS SOUGHT IS UNSUITED FOR THE USES PERMITTED WITHIN THE DISTRICT.

As previously mentioned, the area upon which the rock crusher will be operated has been used as a quarry site for well over 15 years. The area is, thus, unsuited for agricultural purposes due to the quarrying activities.

F. THE PROPOSED USE WILL NOT SUBSTANTIALLY ALTER OR CHANGE THE ESSENTIAL CHARACTER OF THE LAND AND THE PRESENT USE.

With regard to the character of the land, due to its use as a quarry, the introduction of the rock crusher would do little to affect any change thereto. Both the quarrying and crushing activities are related industrial operations which normally go hand-in-hand at other industrially zoned locations. In essence, the crushing operations would constitute a use incidental to the quarrying operations rather than a new and different use of the property.

G. THE PROPOSED USE WILL MAKE THE HIGHEST AND BEST USE OF THE LAND INVOLVED FOR THE PUBLIC WELFARE.

Since the land has been, and will continue to be, utilized as a quarry by Honokaa Sugar Company, it would appear logical and practical to allow the Applicant to maximize the present function of the property by permitting the operation

of the rock crusher thereon. The use of the rock crusher at the quarry site would enable the Applicant to meet its commitment to the State of Hawaii without undue economic hardship, and, as pointed out in Part A above, inure to the benefit of the public, as well.

The State Department of Health commented that, "Authority to Construct Permit for the crusher's air pollution emission is required by the Department of Health's Public Health Regulation, Chapter 43, Air Pollution. Dust and noise concerns need to be studied."

All other cooperating agencies had no comments on or objections to the subject request.

RECOMMENDATION: YAMADA AND SONS, INC.

Upon careful review of the subject request to allow the establishment of a rock crusher within the State Land Use Agricultural District, staff recommends that the request be given a favorable recommendation based on the following considerations:

That the proposed use will not be contrary to the objectives sought to be accomplished by the State 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 these lands are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The area under consideration is classified as Agricultural by the State Land Use Commission. The Agricultural district includes lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural activities by reasons of topography, soil and other related characteristics. The subject area has been put to quarrying use by the Honokaa Sugar Company for quite some time as part of their overall agricultural operations. Due to the continuing quarrying use of the property the site does not lend itself to the cultivation of crops. The quarrying use, however, is ancillary to the overall sugar industry operations. By allowing a crusher operation to be established by Yamana and Sons, Inc., to provide materials for the Honokaa-Waipio Road project no further detraction from the agricultural use of the property will be encouraged. Further, the establishment of a crusher

is not expected to have any adverse effect on the overall agricultural potential of the region.

The proposed rock crusher activity is a conditionally permitted use under the County Zoning Code. The condition under which such a use would be permitted is the securing of a temporary use permit which would prescribe conditions to reduce any nuisance and to specify the manner in which the site shall be left upon termination of the use. The proposed conditions to this Special Permit request would achieve the same end.

That the establishment of the proposed use is not anticipated to adversely affect surrounding properties. As mentioned previously, the site is currently in quarrying use and thus the concerns for surrounding properties are restricted to the additional impacts that may result from the crushing operation. Surrounding land uses include forests, sugar and macadamia nut plantings. The closest dwelling is located approximately one-half mile from the subject site. Any potentially adverse impacts can be mitigated through conditions of approval as well as Department of Health regulations.

That the proposed use is not anticipated to create unreasonable demands on public facilities and utilities. All infrastructure essential to the operation of a crusher are present at the subject site.

It is further recommended that the request be given a favorable recommendation subject to the following conditions:

1. That the petitioner shall secure the necessary permits from the State Department of Health prior to the commencement of rock crushing operations.
2. That all other applicable rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

The request is also subject to the following time condition:

That the Special Permit, without further action by the County Planning Commission and State Land Use Commission, shall be automatically nullified upon the completion of the Honokaa to Waipio State road improvement project (State Project No. 240 A-01-71). The petitioner shall be responsible for notifying the Planning Director of the termination of the project. The Planning Director shall in turn notify the County Planning Commission and the State Land Use Commission of the project termination.

Exhibit Q

RECORD OF VOTING
PLANNING COMMISSION
County of Hawaii

Date August 31, 1978

Petitioner YAMADA AND SONS - Special Permit

Preliminary hearing Public hearing Request Action

ACTION: Approve

Deny

Defer

Continue

Schedule for public hearing

Other: _____

Commissioners	Aye	No	Excused	Abstain
FUJIMOTO, Shigeru			✓	
HANLEY, J. Walsh	✓			
JITCHAKU, Lorraine R.	✓			
MURAKAMI, Haruo			✓	
NAKANO, Bert H.	✓			
ORITA, Alfredo	✓			
PARIS, William Jr.	✓			
SAKAMOTO, Charles			✓	
MIELCKE, William F.	✓			

PLANNING COMMISSION

Planning Department
County of Hawaii

EXHIBIT T

MINUTES

August 31, 1978

The Planning Commission met in regular session at 9:12 a.m. in the Conference Room, First Hawaiian Bank, Kailua, North Kona, Hawaii, and at 1:15 p.m. in the Kealakehe School Cafetorium, Kealakehe, North Kona, Hawaii, and at 4:30 p.m. in the Conference Room, Waimea Civic Center, Waimea, South Kohala, Hawaii, with Chairman William F. Mielcke presiding.

PRESENT: William F. Mielcke (Left
at 5:36 p.m.)

J. Walsh Hanley
Lorraine R. Jitchaku
Bert H. Nakano
Alfredo Orita
William J. Paris, Jr.
Charles H. Sakamoto (Left at 3:15 p.m.)

ABSENT: Shigeru Fujimoto
Haruo Murakami

Ex-officio Member
Akira Fujimoto

Sidney M. Fuke, Director
Ilima Piianaia, Planner
William Moore, Planner

Lionel Meyer, Deputy Corporation Counsel (Left at 5:36 p.m.)
David Murakami, representing Ex-officio Member Edward
Harada (Left at 5:36 p.m.)

And approximately 8 people at 9:12 a.m., 44 people at
1:15 p.m. 7 people at 4:30 p.m. and 6 people at 7:00
p.m.

that the Commission understands this area, they will take a far greater look in the planning of the area.

RECESS: A recess was called at 3:15 p.m.

RECONVENED: The meeting reconvened at 4:44 p.m. in the Conference Room, Waimea Civic Center, South Koahala, Hawaii.

SPECIAL PERMIT
YAMADA AND SONS
KAPULENA,
HAMAKUA Application of Yamada and Sons for a Special Permit to allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District. The area involved is located between the Kawaikalia and Kapulena gulches, approximately 5,000 feet south of the Honokaa-Waipio Road, Kapulena, Hamakua, TMK: 4-7-06:01.

Staff presented recommendation for approval with conditions on file.

The petitioner's representative, Robert M. Yamada, stated that they will be able to comply with the conditions as outlined by the staff. He added that he would appreciate the Commission expediting this matter.

It was moved by Commissioner Orita and seconded by Commissioner Nakano to send a favorable recommendation to the State Land Use Commission with the conditions outlined by the staff. A roll call vote was taken and motion carried with six ayes.

SPECIAL PERMIT
EUNICE AND JANE
PU'UKAPU, SOUTH
KOHALA Public hearing on the application of Eunice and Jane Kamanu for a Special Permit to allow the establishment of a family care home on 9,750 square feet of land situated within the State Land Use Agricultural District. The area involved is located approximately 400 feet north of the Mamalahoa Highway in the Kamuela Meadows Subdivision, about 3,500 feet west of the Mud Lane-Old Mamalahoa Highway junction, Pu'ukapu, South Kohala, TMK: 6-4-09:30.

Staff presented background on file.

The petitioner, Eunice Kamanu, informed the Commission that the other lot is presently vacant and they have no plans for it at present.

Staff clarified that the Public Health Regulation limits a family care home to a maximum of four people in addition to the petitioners.

In response to some of the concerns raised in the Matsushima's letter, Ms. Kamanu pointed out that the maximum number of vehicles they anticipate is three, they plan to erect a 5-foot chain-link fence to prevent residents from straying, they do not have any other existing family care homes, and they do not foresee any excessive noise to be created by their residents.

Staff informed the Commission that the Department of Public Works has stated that the structure does meet the Building Code requirements for a family care home.

September 1, 1978

Mr. Terence T. Yoshioka
80 Pauahi Street
Room 203
Hilo, Hawaii 96720

Dear Mr. Yoshioka:

Special Permit Application
Yamada and Sons
Tax Map Key 4-7-06:01

The Planning Commission at its regular meeting of August 31, 1978 considered the above application for a special permit to allow the establishment of a rock crusher on approximately 20 acres of land situated within the State Land Use Agricultural District Kapulena, Hamakua, Hawaii.

The Commission voted to forward a favorable recommendation to the Land Use Commission subject to the following conditions:

1. That the petitioner shall secure the necessary permits from the State Department of Health prior to the commencement of rock crushing operations.
2. That all other applicable rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

The request is also subject to the following time condition:

That the Special Permit, without further action

EXHIBIT U

Mr. Terence T. Yoshioka
September 1, 1978
Page 2

by the County Planning Commission and State Land Use Commission, shall be automatically nullified upon the completion of the Honokaa to Waipio State road improvement project (State Project No. 240-A-01-71). The petitioner shall be responsible for notifying the Planning Director of the termination of the project. The Planning Director shall in turn notify the County Planning Commission and the State Land Use Commission of the project termination.

In the meantime, should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely,



WILLIAM F. MIELCKE
Chairman, Planning Commission

lgv

cc State Land Use Commission
Land Use Division, DPED
Yamada and Sons

October 20, 1978

Department of Planning and
Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

Attention: Mr. Hideto Kono, Director

Gentlemen:

At its meeting on October 19, 1978, the Land Use Commission voted to approve a Special Permit request by Yamada and Sons, Inc. (SP78-319) to allow the establishment of a rock crusher on approximately 20^{1/2} acres of land situated within the State Land Use Agricultural District at Kapulena, Hamakua, Hawaii, Tax Map Key 4-7-06: portion of 1. Approval of this Special Permit is subject to the conditions imposed by the Hawaii County Planning Commission.

Please note that a copy of the Land Use Commission's Decision and Order on this matter is on file at the Commission's office.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

Encl.

cc: Department of Taxation, Hawaii
Tax Maps Recorder, Dept. of Taxation
Property Technical Office, Dept. of Taxation
Real Property Tax Assessor, Dept. of Taxation
Office of Environmental Quality Control
Division of Land Management, DLNR

October 20, 1978

Mr. Terence T. Yoshioka
Nakamoto, Yoshioka & Chillingworth
80 Pauahi Street, Room 203
Hilo, Hawaii 96720

Dear Mr. Yoshioka:

The original of the attached letter is on file in the office of the Hawaii County Planning Department, 25 Aupuni Street, Hilo, Hawaii.

Please be advised that failure to comply with any of the delineated conditions of approval, particularly those relating to time, shall be reason for termination of the Special Permit. The Land Use Commission will not consider any request for time extension which is filed after the stipulated commencement or expiration dates.

A copy of the staff memorandum is herewith enclosed for your information. The Land Use Commission's Decision and Order on SP78-319 will be forwarded to you at a later date.

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

Encls.

cc: Yamada & Sons, Inc.