



## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

JUL 22 2014

Mr. Byron Fujimoto  
Jas W. Glover, Ltd.  
890 Leilani Street  
Hilo, HI 96720-4529

Dear Mr. Fujimoto:

Special Permit (SPP 14-000162)  
Applicant: Jas W. Glover, Ltd.  
Request: To Establish a New Quarry  
Tax Map Key: 2-1-013:004

The Windward Planning Commission, at its duly held public hearing on July 3, 2014, considered your request to allow the establishment of a new quarry site on approximately 85.338 acres of a 140.368-acre property situated within the State Land Use Agricultural District. The project site is located southeast of the Hawai'i National Guard Site and Hilo International Airport and approximately 3,000 feet southwest of the County's Sewer Treatment Plant site at Honohonou, South Hilo, Hawai'i.

The Commission voted to approve this request and to send a favorable recommendation to the State Land Use Commission for final disposition. The favorable recommendation is based on the following:

The applicant is requesting a Special Permit to establish a new quarry site on approximately 85.338 acres of land on a portion of a larger, 140.368-acre property "subject property" identified at Tax Map Key (3) 2-1-013:004. The material to be quarried is aggregate and rock for commercial applications and consists largely of basaltic "blue rock" with very little cinder. The material will be removed and either processed on site or transported to the applicant's Hilo operations site on Leilani Street. Normal quarry

JUL 22 2014

production hours would be from 6:00 a.m. to 6:00 p.m., Monday through Friday. Work may occur at other times and days, depending upon demand. Approximately 2-8 employees will be on site for quarry uses. Additional employees may be required as production facilities are added. The State of Hawai'i owns the access road that leads from the County-maintained Leilani Street to the quarry site. Kamehameha Schools and its lessees have temporary rights of access via this road until such time as a more formal access is developed by the State. During normal production, the traffic impact on the access road will be between 15 and 50 truckloads of material per day. Dust mitigation measures, such as watering trucks, will be used to minimize dust generated by the operation. All activities will conform to the State Department of Health regulations.

Kamehameha Schools (BP Bishop Trust Estate) owns all 140.368-acres and has been licensing portions of the property to quarry operators over the last 18 years. According to the applicant, a quarry license was granted to Jas. W. Glover, Ltd., on June 1, 1997, for approximately 80 acres of the 140.368-acre property for a period of 30 years. A quarry license was granted to Jas. W. Glover, Ltd., on January 15, 2012, for 49.9982 acres, comprising the balance of the 140.368-acre property, for a period of 15 years. Both license agreements will end on May 31, 2027, with an option for a 10-year extension on the license for the 80-acre portion. Previously, Kamehameha Schools had leased the 49.9982-acre portion to Yamada & Sons, Inc. as a quarry site.

This subject application has been submitted to comply with Condition No. 2 of Special Permit No. 2012-000145, which required that the applicant submit a properly filed Special Permit application for the establishment of quarry activities for the un-quarried remainder (approximately 85.338 acres) of the 140.368-acre property to the Planning Department for consideration by the State Land Use Commission within one year (by March 7, 2014).

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules of Practice and Procedure. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

**The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (HRS), as amended.** The State Land Use Law and Regulations are intended to preserve, protect and encourage the

development of lands in the state for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the Agricultural district may not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District.

Although the property is designated for Agricultural uses by both the State Land Use Commission and the County Zoning Code, its soils are considered very poor and not optimal to support agricultural activities. The request is considered unusual and reasonable in that the proposed quarry area has no direct relationship to any potential agricultural activities that could be conducted upon the property given its proximity to existing quarries and other nearby industrial uses such as the Hilo landfill, wastewater treatment plant, and airport. Therefore, based on the above circumstances, approval of the request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions.

In addition to the above listed criteria, the Planning Commission shall also consider the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

**(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** As mentioned previously, approval of this request will not be contrary to the objectives of the State Land Use Law and is considered an unusual and reasonable use of the agricultural land due to the poor soil quality that is not conducive towards agricultural activities. Therefore, the proposed request will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

**(B) The desired use would not adversely affect surrounding properties.** The surrounding properties include the County of Hawai'i landfill sites, other quarrying operations and vacant lands owned by the State and Kamehameha Schools. There are no dwellings or urban developments within the immediate area. Other existing uses within the general vicinity include the County's wastewater treatment plant, the landfill site, the airport, a skeet range and the Hawai'i National Guard training facility. Dust generated during quarry operations will be mitigated by watering down the roadway and complying with regulations of the Department of Health. A condition will be added to insure that

the applicant restores the area to a state that would blend with the surrounding topography of the area once the activity is completed. All required measures to minimize traffic, dust and noise shall be adhered to by the applicant. The existing quarry mining in various portions of the parcel has been ongoing with existing levels of noise, dust and fumes generated by the operation. The proposed quarry site and surrounding areas have been subject to quarrying activities under license issued by Kamehameha Schools and permitted through the issuance of Special Permits for the past 18 years. The Planning Department is not aware of any complaints that have been generated by these on-going quarrying activities in this particular area. The relative isolation of these quarry sites from residential uses and its proximity to other industrial-types of activities have, arguably, allowed this particular area within the City of Hilo to be accepted by the community as the prime locale for these types of operations. The past 18 years of quarrying activities have demonstrated that this particular location, and the project site in particular, is well-suited to support quarrying activities with minimal adverse impact to the surrounding community. Therefore, the proposed use is not anticipated to adversely affect surrounding properties.

**(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.** According to the applicant, they have temporary rights of access until such time as a more formal access is developed by the State. The existing section of the access road is hard-packed gravel approximately 20 feet wide. The road then widens to between 25 and 30 feet wide and partially paved. In addition, the applicant has paved the driveway access on the subject property, which leads to the actual quarry site. This access road is adequate for its intended purpose, which is to accommodate traffic associated with the quarry operations and which does not support general vehicular access. For dust mitigation, the applicant will bring in tanker trucks to water down the roadway. Portable restrooms will be brought to the property. Water will be made available to the subject property by tanker trucks for dust mitigation. Therefore, the proposed use will not unreasonably burden public agencies to provide services or infrastructure.

**(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.** In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and surrounding areas are designated for agricultural uses

by both State and County land use laws. Through the issuance of a Special Permit, various "non-agricultural" services may be allowed. There are many areas in the County where lands within the Agricultural District are not in active agricultural productivity. Because quarrying is resource-based, sites are restricted by location of the mineral resource. Existing quarrying activities are occurring on portions of the subject property and in the near vicinity of the project. There is no record of any agricultural uses on the subject property for decades.

**(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** The subject property is rated "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and Other Important Agricultural lands by the ALISH Map. The soils in this area are not suitable for many types of agricultural uses. Surrounding parcels are also in quarry use and industrial-related activities.

**(F) The use will not substantially alter or change the essential character of the land and the present use.** The proposed use will not substantially change the character of the land, as the area is already used for quarry activities.

**(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.** The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The subject request is not contrary to the General Plan LUPAG Map, which designates the property as Extensive Agriculture, Important Agricultural Land and Industrial. The project would complement the following goals and policies of the General Plan:

Land Use - Industrial Element:

- Industrial activities may be located close to raw material or key resources. The ability of the subject property to provide the needed raw material vital to the construction industry while able to absorb the noxious nature of quarries speaks to the appropriateness of the area for such uses.

Economic:

- The County shall strive for diversification of its economy by strengthening industries and attracting new endeavors.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawai'i

Natural Resources and Shoreline Elements:

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

In order to provide for raw construction materials that are vital to the construction industry, quarries must be established in locations where there is an abundance of these raw materials. For this reason, quarries, while industrial in character, cannot be confined to Industrial-designated areas. As evidenced by the issuance of Special Permits for other quarries within the subject property, this area contains the raw materials essential to the construction industry. The establishment of the proposed quarry in this particular location will not adversely impact agricultural resources, as many of the uses are industrial in nature. There are many areas in the County where lands within the Agricultural District are not in active agricultural productivity. Because quarrying operations are resource-based, sites are restricted in location by the availability of raw materials. Other previous and ongoing quarry activities in the vicinity of the project site have shown that the materials are available in this area, which makes this an appropriate site to establish a quarry. The basic nature of quarrying activities means that natural resources and the natural environment will be compromised. Reviewing agencies and the Planning Department have not identified any specific important habitat associated with endangered species and have found that the project site is not in close proximity to or contain a proposed or designated critical habitat. However, there is the possibility that the project site could provide a potential habitat for the Hawaiian hoary bat, the Hawaiian hawk, the Hawaiian petrel, the Newell's shearwater, and the Nēnē. To avoid and minimize potential significant adverse impacts upon these animal species and endangered

plants, a condition of approval will require faunal and floral surveys of the proposed quarry site prior to commencing operations in coordination with the U.S. Fish and Wildlife Service.

**The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the coastal zone management program.** The subject property is located over one mile to the nearest shoreline and does not contain streams or waterways that empty into the sea and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. The property is located well outside of the Special Management Area (SMA) and tsunami evacuation zone. Additionally, there is no designated public access to the shoreline areas or mountain areas over the property. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

**The request will not have a significant adverse impact to traditional and customary Hawaiian Rights.** In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa 'akai O Ka 'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: An Archaeological Assessment of the southern 50-acre portion of the subject property was conducted by Glenn G. Escott dated September 2012. An Archaeological Assessment of the northern 90-acre portion of the subject property was conducted by Glenn G. Escott dated September 2013. A flora and fauna study of the subject property has not been conducted.

The valuable cultural, historical, and natural resources found in the permit area: Both Archaeological Assessments concluded that no archaeological sites or features and no cultural resources or modern structures were located within the subject property. The 2012 report addressed the presence of the trail alignment stating that "A single site, the Historic Puna Trail (Site 50-10-99-18869), also referred to by the Old Government Road's State Number 50-10-36-21272) is located just outside the southern boundary of the current project area." The Department of Land and Natural Resources-State Historic Preservation Division issued a letter dated April 15, 2014 stating that they have completed review of two archeological inventory surveys for the entire 140-acre subject property and agreed with the conclusions and recommended archeological monitoring during initial ground clearing and grubbing. In their memo dated April 11, 2014 (P.D. Exhibit 25), the U.S. Fish and Wildlife Service identified five threatened or endangered

species that may be in the vicinity of the subject property, and recommended various conservation measures to eliminate or reduce adverse impacts to these species and unknown endangered or threatened plant species. One of the recommendations is for a qualified biologist to conduct Nēnē nest surveys and Hawaiian hawk nest surveys prior to vegetation clearing and beginning quarry activities in un-quarried areas of the property.

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

Feasible actions to protect native Hawaiian rights and valued resources: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of the permit will require the applicant implement an Archeological Monitoring Plan approved by SHPD during ground clearing and grubbing activities on the property. Additionally, the applicant will be required to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed with quarry activities only upon receiving an archaeological clearance from the DLNR-SHPD. A condition of the permit will require floral and faunal surveys (including nest surveys) prior to vegetation removal of any un-quarried areas of the property. Conducting these surveys just prior to starting quarry activity of a forested area will ensure that the surveys accurately reflect any endangered or threatened species present in the area at the time.

Based on the above considerations, the quarry operation and accessory uses within the project site is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Prior to commencing construction of any structures, Final Plan Approval for those structure(s) shall be secured from the Planning Department in accordance with Chapter 25-2-70 (Zoning Code). Plans shall identify any proposed structures and parking associated with the proposed quarry operation.



3. Quarrying activities shall be limited to the hours of 6:00 a.m. to 6:00 p.m. daily. Work may occur at other times depending on demand, except from September 15 to December 15.
4. Prior to commencement of quarry activity on any previously un-quarried land, a Site Restoration and Revegetation Plan, which assures the site will be left in a nonhazardous condition, shall be submitted for review and approval by the Planning Director. The Plan shall include photographs of the area and a topography map of the project site and its related surroundings. This Plan shall be reviewed by Kamehameha Schools, the Natural Resources Conservation Service and the Department of Public Works and their comments submitted to the Planning Director for review and approval.
5. Adequate dust control mitigation measures shall be implemented for the duration of the quarry operation in accordance with Department of Health requirements. An adequate supply of water shall be made available for dust control.
6. Prior to commencing any land alteration activity on any un-quarried portions of the property, the applicant shall secure approval by the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) of an Archaeological Monitoring Plan to ensure that no historic sites are inadvertently damaged or destroyed. This plan will call for "on-call monitoring" in conjunction with DLNR-SHPD. A copy of the approved plan shall be provided to the Planning Department.
7. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be removed during bat breeding season of June 1<sup>st</sup> to September 15<sup>th</sup> without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist.
8. To protect any Hawaiian hawk and Hawaiian goose in the vicinity of the property, vegetation clearing and beginning quarry activities shall not occur in the un-quarried areas of the permit area during hawk breeding season of March to September and goose breeding season of October to March without first conducting surveys for hawk and goose nests and coordinating with US Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist.

9. Prior to removing vegetation on any un-quarried portions of the property, the applicant shall conduct a flora study and submit to the U.S. Fish and Wildlife Service (USFWS) for review and approval. The applicant shall implement any mitigation measures required by USFWS and provide a copy of the approved study and mitigation plan to the Planning Department.
10. No retail sale of quarrying materials is allowed from the project site. Removal of the materials shall be limited to licensed commercial haulers or by licensed contractors.
11. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
12. Within ninety (90) days after termination of the quarry operation or abandonment of the project site, *appropriate documentation which demonstrates compliance* with the Site Restoration and Revegetation Plan shall be submitted to the Planning Department.
13. Comply with all applicable laws, rules, regulations and requirements of other affected agencies.
14. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

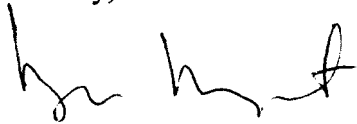
Mr. Byron Fujimoto  
Jas W. Glover, Ltd.  
Page 11

15. Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

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

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8142.

Sincerely,



Myles Miyasato, Chairman  
Windward Planning Commission

LJasGloverSPP14-162wpc

cc: Roy A. Vitousek III Esq., Cades Schutte LLP  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
State Land Use Commission  
State DLNR-HPD  
Mr. Gilbert Bailado  
Plan Approval Section



LAND USE COMMISSION  
STATE OF HAWAII

2016 AUG 26 P 12:47

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

**In the Matter of the Petition of**

**JAS. W. GLOVER, LTD**

For A Special Permit for Quarrying and Other Support Services and Accessory Uses on 85.34 Acres of a 140.368 Acre Parcel Owned by Kamehameha Schools and Located Within the State Agricultural District, East of the Hawai'i National Guard Site and Hilo International Airport, and 3,000 Feet West of the County of Hawai'i Sewer Treatment Plant; TMK: (3) 2-1-013: 004 (por).

DOCKET NO. SP14-404

ORDER ADOPTING THE COUNTY OF HAWAII WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH MODIFICATIONS; AND CERTIFICATE OF SERVICE

ORDER ADOPTING THE COUNTY OF HAWAII WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH MODIFICATIONS

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

August 26, 2016 by

Executive Officer

Daniel E. Orodenker, Executive Officer



LAND USE COMMISSION  
STATE OF HAWAII

2016 AUG 26 P 12:47

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

**In the Matter of the Petition of**

**JAS. W. GLOVER, LTD**

For A Special Permit for Quarrying and Other Support Services and Accessory Uses on 85.34 Acres of a 140.368 Acre Parcel Owned by Kamehameha Schools and Located Within the State Agricultural District, East of the Hawai'i National Guard Site and Hilo International Airport, and 3,000 Feet West of the County of Hawai'i Sewer Treatment Plant; TMK: (3) 2-1-013: 004 (por).

DOCKET NO. SP14-404

ORDER ADOPTING THE COUNTY OF HAWAII WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH MODIFICATIONS; CERTIFICATE OF SERVICE

ORDER ADOPTING THE COUNTY OF HAWAII WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH MODIFICATIONS

AND

CERTIFICATE OF SERVICE



LAND USE COMMISSION  
STATE OF HAWAII

2016 AUG 26 P 12:47

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

**In the Matter of the Petition of**

**JAS. W. GLOVER, LTD**

For A Special Permit for Quarrying and Other Support Services and Accessory Uses on 85.34 Acres of a 140.368 Acre Parcel Owned by Kamehameha Schools and Located Within the State Agricultural District, East of the Hawai'i National Guard Site and Hilo International Airport, and 3,000 Feet West of the County of Hawai'i Sewer Treatment Plant; TMK: (3) 2-1-013: 004 (por).

DOCKET NO. SP14-404

ORDER ADOPTING THE COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH MODIFICATIONS; CERTIFICATE OF SERVICE

ORDER ADOPTING THE COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH MODIFICATIONS

On March 5, 2014, Jas Glover Ltd. ("**Applicant**") filed an application for a State Special Permit (SP) with the County of Hawai'i's Windward Planning Commission ("**Planning Commission**") for rock quarrying operations on 85.338 acres of a 140.368 acre parcel (the "**Property**"). This covered only new, unquarried areas of the 140 acre parcel instead of including any of the existing less than 15-acre Special Permits currently on the parcel.

On July 3, 2014, the Planning Commission conducted a hearing on the SP application and after due deliberation voted to approve the application subject to 15 conditions and then forwarded a recommendation for approval to the Land Use Commission ("**LUC**").

On November 20, 2014, the LUC met in Kahului, Hawai'i to consider and deliberate on this application for a SP and voted to remand SP14-404 to the Planning Commission with the

express purpose of considering information received from the Hawai'i Army National Guard regarding new historic site findings and boundary discrepancies with the permit area and modifying the Decision and Findings accordingly.

On June 2, 2016, the Planning Commission, at its duly held public hearing, discussed and acted upon the remand by the LUC to consider additional information from the Hawai'i Army National Guard regarding new historic sites findings, boundary discrepancies affecting the permit area and modifying the SP as appropriate. The Planning Commission voted to send a favorable recommendation to the LUC with proposed conditions for final disposition.

On July 15, 2016, the LUC received the Planning Commission's Decision and Findings and accompanying Exhibits 47-67<sup>1</sup> regarding establishing a new quarry.

The LUC, having examined the testimony, evidence and arguments of counsel presented during the hearings, along with the pleadings filed herein (including testimony, argument and pleadings occurring on the SP application prior to the remand), hereby makes the following findings of fact, conclusions of law, and decision and order:

## **I. FINDINGS OF FACT**

1. On February 4, 2013, the LUC staff mailed a comment letter to the County of Hawai'i ("County") recommending that the SP application proposal for quarrying a 10.5-acre parcel in Hilo by Applicant should be directed to the LUC for review and action. As noted in the LUC staff's letter, the proposed use was actually part of a much larger series of active quarrying operations taking place on a 140-acre parcel by Applicant.
2. On March 5, 2014, the Applicant filed an application for a SP with the Planning Commission for rock quarrying operations on 85.338 acres of a 140.368 acre parcel.
3. On March 7, 2013, the Planning Commission approved a 10.5 acre SP with a condition requiring the Applicant to file for a new SP for the remaining 85+ acres not covered by permits, within one year.
4. On March 20, 2014, the LUC received a request from the County for comments on a new SP application by Applicant for proposed quarrying use on 85.338 acres of a 140-acre

---

<sup>1</sup> Applicant's original filing contained Exhibits 1-46. Exhibits 1-67 were considered by the Planning Commission during the remand.

parcel. This covered only new, unquarried areas of the 140 acre parcel instead of including any of the existing less than 15-acre Special Permits currently on the parcel.

5. On April 4, 2014, the LUC staff mailed a comment letter to the Planning Commission regarding the new proposed SP request by the Applicant. That letter clarified the LUC staff's position and understanding with the Applicant, that in return for not contesting their previous application for the 10.5-acre SP the Applicant would apply for a new SP for the entire 140-acre parcel to include all the existing quarrying operations under a single SP. In addition, the LUC staff's letter noted that a draft Archaeological assessment had only recently been submitted to the State Historic Preservation Division ("SHPD") for review and that any decision-making on the application would be premature until SHPD had reviewed and provided a concurrence letter.
6. On April 15, 2014, the LUC received the State Office of Planning's ("OP") comment letter to the Planning Commission on the proposed SP. OP's letter concurred with the LUC staff's recommendation that the proposed SP should consolidate the existing Special Permits with the current request; and, that no determination of acceptability of the Archaeological assessment by SHPD has been made. In addition, OP recommended that the State Department of Transportation should be consulted on possible impacts and access requirements, and, that the Planning Commission impose a condition requiring the Applicant to reclassify the parcel into the Rural or Urban District prior to expiration of the permit since the site is unlikely to ever return to an agricultural use.
7. On May 28, 2014, the LUC received comments from Applicant in response to the LUC staff's April 4, 2014 comments. Applicant explains that its application is only for the unquarried portion of the 140-acre parcel because that is all that was required by the Planning Commission's approval of Applicant's previous 10.5-acre SP; no mention of the clear statement in the Planning Commission's approval as represented by Applicant that "...the issuance of this 10.15-acre Special Permit application with the stipulation that a Special Permit application be submitted for all quarrying activities, existing and proposed, within the 140-acre property."
8. On June 17, 2014, the LUC staff mailed the Planning Commission clarifying LUC staff's position and pointing out discrepancies with the previously approved 10.5-acre SP as it relates to the SP under consideration. The LUC staff identified five separate issues that the County of Hawai'i Planning Department and the Planning Commission should have the Applicant address prior to any decision-making.
9. On July 3, 2014, the Planning Commission conducted a hearing on the SP application pursuant to public notice to surrounding property owners and lessees of record within 500 feet of the Property. There was no public testimony on the application. After due deliberation at its hearing the Planning Commission voted to approve the application subject to 15 conditions and forward a recommendation for approval to the LUC.
10. In early July 2014, five commissioners resigned from the LUC, prior to implementation of Act 230 (SLH 2014) requiring public disclosure of financial disclosure statements.



This resulted in a temporary lack of quorum for purposes of conducting business. The SP application, among others, pending before the LUC were in jeopardy of being automatically approved due to inability of LUC to take action.

11. On August 1, 2014, the LUC received from the Planning Commission Approval and Recommendations to the LUC. The Planning Commission recommended approval by the LUC subject to 15 conditions.
12. On September 12, 2014, the LUC received a letter from Applicant requesting to waive the 45-day requirement to take action on the SP application and requesting the LUC to consider the application within the next 90 days.
13. On November 7, 2014, the LUC received the required SP filing fee from Applicant.
14. On November 10, 2014, the LUC mailed the agenda and meeting notice to the Parties and the Statewide, Hawai'i island, and Maui island mailing lists.
15. On November 14, 2014, Jas Glover, Ltd. filed Applicant's Memorandum in Support of Approval of Special Permit and Exhibits 1-4. The memorandum contained argument by Applicant in support of its request that the LUC amend certain conditions (Conditions No. 7, 8, and 9) of approval as set by the County and add a new condition.
16. On November 20, 2014, the Commission met in Kahului, Hawai'i to consider and deliberate on this application for SP and voted to remand SP14-404 to the Planning Commission for the express purpose of considering information received from the Hawai'i Army National Guard regarding new historic site findings and boundary discrepancies with the permit area and modifying the Decision and Findings accordingly.
17. Between December 5, 2014 and February 10, 2015, the Applicant, the Planning Commission, the Hawai'i Army National Guard exchanged correspondence regarding this SP application.
18. On January 23, 2015, the LUC mailed a copy of its Order remanding SP14-404 to the Planning Commission and to the Parties.
19. On June 30, 2016, the LUC received a copy of the Planning Commission's correspondence to the Applicant regarding its favorable recommendation to the LUC.
20. On July 15, 2016, the LUC received the Planning Commission's Findings and Decision and accompanying Exhibits 47-67 approving the application for SP regarding establishing a new quarry on the 85.338 acres of land.
21. On August 1, 2016, the LUC sent the August 10, 2016 LUC agenda notice to the Parties and to the Statewide, Hawai'i and O'ahu mailing lists.
22. On August 4, 2016, the County of Hawai'i Planning Department advised the LUC by phone that it would not be attending the August 10, 2016 meeting.

23. On August 8, 2016, the LUC received written correspondence from the County of Hawai'i Planning Department confirming and explaining why it would not be attending the August 10, 2016 meeting.
24. On August 10, 2016, the LUC conducted a meeting at the State Department of Transportation meeting facilities at the Honolulu International Airport. Entering appearances were Roy A. Vitousek III, Esq., and Mike Pearing representing Jas Glover Ltd.; Dawn Takeuchi Apuna, Esq. and Rodney Funakoshi, representing OP. The County of Hawai'i Planning Department had previously advised by correspondence that it would not be present.
25. At its meeting on August 10, 2016, the LUC Chair noted for the record that all Commissioners present except Commissioners Cabral, Chang and Okuda had been present at the November 20, 2014 hearing. The LUC Chair further noted that Commissioners Cabral, Chang, and Okuda were provided with all the transcripts, minutes and submitted materials related to this docket for their review in preparation for this hearing; and Commissioners Cabral, Chang and Okuda each confirmed that they had reviewed all the materials and were prepared to participate in the proceedings.
26. At the August 10, 2016 remand hearing, Commissioners Edmund Aczon, Jonathan Likeke Scheuer, Arnold Wong, Kent Hiranaga, Nancy Cabral, Linda Estes, Dawn Chang, and Gary Okuda were in attendance. The Commission provided an opportunity for public testimony. There was no public testimony. The Commission voted unanimously to grant the sp
27. On August 25, 2016, the Commission met via videoconference participation with Commissioner Linda Estes from Lihue, Kauai; Commissioner Kent Hiranaga from Kahului, Maui; Commissioner Nancy Cabral from Hilo, Hawaii; and Commissioners Jonathan Scheuer, Gary Okuda, Aaron Mahi, and Edmund Aczon from Honolulu, Hawaii to consider and deliberate on adopting the form of the order for this docket. The LUC Chair noted for the record that all Commissioners present except for Commissioner Mahi had been present at the August 10, 2016 hearing. The LUC Chair further noted that Commissioner Mahi had been provided with all the transcripts, minutes and submitted materials related to this docket for his review in preparation for this hearing; and Commissioner Mahi confirmed that he had reviewed all the materials and was prepared to participate in the proceedings.
28. At the August 25, 2016 remand hearing, the Commission provided an opportunity for public testimony. There was no public testimony. Entering appearances were Roy A. Vitousek III, Esq., and Mike Pearing representing Jas Glover Ltd.; Ruby Edwards, representing OP; and Maija Jackson representing the County of Hawai'i Planning Department. The County of Hawai'i Office of Corporation Counsel had previously advised by correspondence that it would not be present. The Commission unanimously voted to adopt the form of the order with the conditions and recommendations of the County of Hawai'i Windward Planning Commission.

**A. PROPOSAL FOR SPECIAL PERMIT**

29. The property that is the subject of the application is located at Waiākea, South Hilo, island of Hawai‘i. The site consists of approximately 85.338 acres of land within a larger parcel identified as Tax Map Key (“**TMK**”) 2-1-013: portion 004 that is approximately 140.368 acres in size. The Property is owned by Kamehameha Schools who has authorized the Applicant, as lessee, to file the SP application.
30. The Applicant proposes to establish a new quarry site on approximately 85.338 acres of land that is a portion of a larger 140.368-acre parcel. The primary materials to be quarried are aggregate and basaltic “blue rock” with a little cinder, all for commercial applications. The material will be removed and either processed on site or transported to the Applicant’s Hilo operations site on Leilani Street. This application is tied into a condition of approval from SP No. 2012-000145.
31. Applicant proposes to conduct the quarrying during normal working hours between 6:00 a.m. and 6:00 p.m., Monday through Friday. However, Applicant indicated that work may occur at other times and days, depending upon demand. The number of proposed employees ranges from 2-8, although additional employees may be required as production facilities are added.
32. Applicant projects that during normal operations; there will be between 15 and 50 truckloads of material on the access road per day.

**B. DESCRIPTION OF THE PETITION AREA & SURROUNDING AREA**

33. The Property is located southeast of the Hawai‘i National Guard Site and Hilo International Airport, and approximately 3,000 feet southwest of the County of Hawai‘i’s Sewer Treatment Plant.
34. The State of Hawai‘i owns the access road that leads from the County-maintained Leilani Street to the SP site. Kamehameha Schools and its lessees have temporary rights of access via this road until such time as a more formal access is developed by the State.
35. The Property is partially forested and partially being actively quarried for rock and aggregate. There have been five previous Special Permits to establish quarries on the Property (all slightly less than 15 acres); four of which are currently valid and cover approximately 55 acres. The areas of the Property that have not been quarried are forested with both native and non-native vegetation.
36. The Property is within the State Agricultural District; under the County’s General Plan Land Use Pattern Allocation Guide (“**LUPAG**”) the Property is identified as Important Agricultural Land, Extensive Agriculture and Industrial; designated A-40a in the Hilo Community Development Plan; and zoned Agricultural (A-5a) under the County Zoning

Code. The Property is not located within the County's Special Management Area ("SMA").

37. Adjacent lands are zoned Agricultural (A-5a and A-20a) and Light Industrial (ML-20). Surrounding uses include the Hawai'i County transfer station and landfill sites, existing quarry operations, a skeet range and vacant State-owned lands. The Hilo Airport runway is located to the North; and the Hawai'i National Guard Military Reservation is located to the southeast.
38. The Property is located within Zone X, outside the 500-year flood hazard area.
39. The U.S. Department of Agriculture, Soil Conservation Service, classifies the soils on the Property as Paipai series (rPae) and Lava Flows, Pahoehoe (rLW). Paipai series consists of well-drained, thin, extremely stony organic soils over fragmental 'A'ā lava. Permeability is rapid, runoff is slow and erosion hazard is slight. Lava Flows, Pahoehoe have no soil covering and is typically bare of vegetation.
40. The Land Study Bureau's detailed land classification classifies the Property as overall (master) productivity rating class E or Very Poor. The Agricultural Lands of Importance to the State of Hawai'i classification system classifies the Property as "Unclassified" and "Other Important Agricultural Lands."
41. A flora and fauna study of the 85-acre proposed SP area has not been conducted. Except for the southernmost portion of the proposed SP area that has been quarried in the past under a lapsed SP, the proposed SP area is forested with native and non-native species.
42. The U.S. Fish and Wildlife Service identified five threatened or endangered species that may be in the vicinity of the Property and recommended various conservation measures to eliminate or reduce adverse impacts to these species. One of the recommendations was to have a qualified biologist conduct Nēnē nest surveys and Hawaiian hawk nest surveys prior to vegetation clearing and beginning of quarrying activities in un-quarried areas of the Property.
43. An Archaeological Assessment of the southern 50-acre portion of the Property was conducted by Glenn G. Escott dated September 2012.
44. An "Archaeological Assessment Survey" for a 90-acre quarry site dated September 2013 was prepared and submitted with the application. Though no cultural resources were identified within the Property, it is possible that some archaeological features might be hidden under the undisturbed, thick vegetation.
45. SHPD reviewed the two archaeological inventory surveys for the entire 140-acre property and agreed with the conclusions and recommended archaeological monitoring during initial ground clearing and grubbing. SHPD has recommended that an archaeological monitoring plan be prepared by Applicant and submitted for review and approval of SHPD prior to any ground clearing or grading activities.

46. The Applicant submitted to SHPD for its review a "Draft Archaeological Monitoring Plan" dated June 2014. However, there is no documentation provided that SHPD has reviewed and approved the plan. The Planning Commission recommended a condition that requires the Applicant to implement an Archaeological Monitoring Plan approved by SHPD during ground clearing and grubbing activities on the Property.
47. A summary report was prepared by Glenn G. Escott in August 2015 describing the four recorded archaeological sites located in closest proximity to the Property. The sites are located between 100 and 300 meters southeast of the existing Applicant's quarry boundary and between 300 and 600 meters southeast of the Property. This includes the possible remnants of the Puna Trail which extend to the south outside of the Property. No evidence of trails or any other archaeological features or burial areas were found within the Property.
48. The Edith Kanaka'ole Foundation ("EKF") prepared a comprehensive ethno-historical study of Honohononui for Kamehameha Schools Land Assets Division in 2012. Honohononui includes the Property. This study included oral history interviews with residents and those with familial ties throughout the Honohononui area, identifying cultural information and culturally significant places. No specific cultural places or practices were identified to exist or have taken place within the Property.
49. The Applicant submitted an analysis discussing the three-part process provided by the Hawai'i Supreme Court in its September 11, 2000 decision (*Ka Pa 'akai O Ka 'āina v. Land Use Commission*) for addressing the preservation and protection of customary and traditional Hawaiian practices. The findings determined that there are no specific valued cultural, historical, or natural resources present, nor are there any traditional and customary native Hawaiian rights being exercised within the Property.

#### C. CONFORMANCE WITH SPECIAL PERMIT CRITERIA

50. Pursuant to HRS Section 205-6, the Planning Commission concluded that the proposed use is an "unusual and reasonable" use as set forth in Hawai'i Revised Statutes ("HRS") Section 205-6 and the guidelines established under Rule 6-6 of the Planning Commission Rules of Practice and Procedure.
51. The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, HRS, as amended.
52. The proposed use is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
  - a. Due to poor soil quality the Property is not conducive to agricultural activities; therefore will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

53. The desired use would not adversely affect surrounding property.

- a. There are no dwellings or urban developments within the immediate area. The surrounding properties include County of Hawai'i landfill sites, other quarrying operations, vacant lands owned by the State and Kamehameha Schools, the County's wastewater treatment plant, the Hilo Airport, a skeet range, and the Hawai'i National Guard training facility.
- b. Dust generated by the quarry operations will be mitigated by watering down roadways and complying with State Department of Health regulations.
- c. The area will be restored to a state that will blend in with surrounding topography.
- d. Applicant will adhere to all required measures to minimize traffic, dust and noise.
- e. The Planning Department is not aware of any complaints generated by the ongoing quarrying operations in the area.

54. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements and police and fire protection.

- a. The Applicant has temporary rights of access to the Property until such time as more formal access is developed by the State.
- b. The access road is adequate for its intended purpose which is to accommodate traffic associated with quarry operations, not general vehicular access.
- c. The Applicant will bring in tanker trucks to water down the roadway.
- d. Portable restrooms will be brought to the Property.

55. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

- a. There are many areas in the County where lands within the Agricultural District are not in active agricultural productivity. Since quarrying is resource-based, sites are restricted by location of the mineral resource.
- b. Existing quarrying activities are occurring on portions of the Property and in the near vicinity of the Property.
- c. There is no record of any agricultural uses on the subject property for decades.

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

- a. The Property is rated “E” or “Very Poor” for agricultural productivity by the Land Study Bureau (“LSB”) and as Other Important Agricultural lands by the Agricultural Lands of Importance to the State of Hawai‘i (“ALISH”) maps. The soils are not suitable for many types of agricultural uses.
  - b. Surrounding parcels are also in quarry use and industrial-related activities.
57. The use will not substantially alter or change the essential character of the land and the present use.
- a. The Property is already used for quarry activities.
58. The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, HRS, relating to the coastal zone management program.
- a. The Property is located over one mile from the nearest shoreline and does not contain streams or waterways that empty into the sea; therefore the activity will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities.
  - b. The Property will not affect coastal hazards.
  - c. The Property is located outside the Special Management Area (SMA) and tsunami evacuation zone.
  - d. There is no designated public access to the shoreline areas or mountain areas over the Property.

### **RULINGS ON PROPOSED FINDINGS OF FACT**

All of the Planning Commission’s findings are adopted, except as modified or rejected by findings of fact contained herein. Any of the findings of fact submitted by Applicant or other parties not already ruled upon by the LUC by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

## CONCLUSIONS OF LAW

59. The Planning Commission and the LUC have jurisdiction to permit unusual and reasonable uses within the State Land Use Agricultural District pursuant to section 205-6, HRS and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR").
60. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, the LUC finds that the recommendation of the Planning Commission to approve a State SP for the Property, generally meets the guidelines for determining an "unusual and reasonable use" within the State Land Use Agricultural District.
61. Article XII, section 7, of the Hawai'i State Constitution requires the State and its political subdivisions to protect native Hawaiian traditional and customary rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 450, n. 43, cert. denied, 517 U.S. 1163 (1996); *Ka Pa 'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000). There have been no specific valued natural and cultural resources identified within the Property. No evidence has been identified to demonstrate that traditional and customary cultural practices are being exercised within the Property currently, nor have any such practices been documented as taking place in the past within the Property. Therefore, the proposed use will not affect or impair any valued cultural, historical or natural resources related to customary and traditional native Hawaiian practices.
62. Article XI, Section 7, of the Hawai'i State Constitution provides that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people. The Property is located outside of the Special Management Area, and is consistent with the objectives and policies of the Coastal Zone Management Act, HRS Chapter 205A. The Project will not entail any significant use of, nor generate significant impacts to, groundwater resources.
63. Article XI, Section 1, of the Hawai'i State Constitution states that all public natural resources are held in trust by the State for the benefit of the people. When an agency is confronted with its duty to perform as a public trustee under the public trust doctrine, it must preserve the rights of present and future generations in the waters of the State. The agency's duty and authority is to maintain the purity and flow of waters for future generations and to assure that the waters of our land are put to reasonable and beneficial use for the public's benefit.
64. Article XI, Section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. The Property is not classified as Important Agricultural Land under Part III of HRS chapter 205.



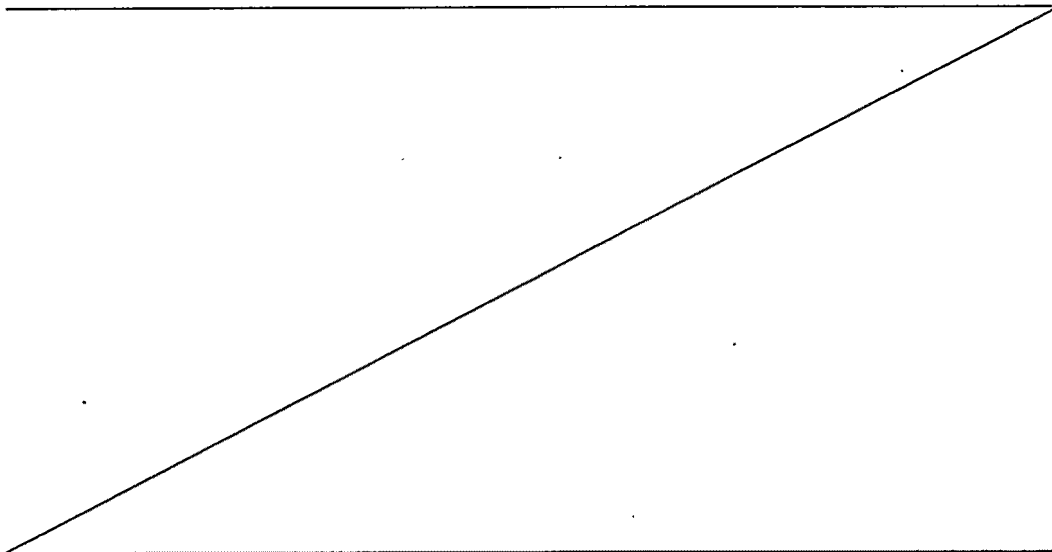
## DECISION AND ORDER

Having duly considered the complete record of the Planning Commission's original and remand proceedings on the Application and the oral arguments presented by the parties in this proceeding, and good cause existing and upon motion duly passed by the LUC at a hearing conducted on August 10, 2016, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, the LUC hereby APPROVES the special permit granted by the Planning Commission to allow for the establishment of a new quarry site on approximately 85.338 acres of a 104.368-acre property as described herein on a portion of TMK No. (3) 2-1-013: 004, subject to the following conditions, all as stated in the Planning Commission's Decisions dated July 3, 2014 and June 2, 2016, and as modified by the LUC on August 10, 2016:

1. The Applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Prior to commencing construction of any structures, Final Plan Approval for those structure(s) shall be secured from the Planning Department in accordance with Chapter 25-2-70 (Zoning Code). Plans shall identify any proposed structures and parking associated with the proposed quarry operation.
3. Quarrying activities shall be limited to the hours of 6:00 a.m. to 6:00 p.m. daily. Work may occur at other times depending on demand, except from September 15 to December 15, which is the seabird fledging period.
4. Prior to commencement of quarry activity on any previously un-quarried land, a Site Restoration and Revegetation Plan, which assures the site will be left in a nonhazardous condition, shall be submitted for review and approval by the Planning Director. The Plan shall include photographs of the area and a topography map of the project site and its related surroundings. The Plan shall be reviewed by Kamehameha Schools, the Natural Resources Conservation Service and the Department of Public Works and their comments submitted to the Planning Director for review and approval.
5. Prior to commencement of quarry activity in the area of the disputed property boundary between TMK (3) 2-1-013:010 and the Property (southeast corner of subject property), the Applicant shall provide a letter to the Planning Department indicating the boundary discrepancy with the Hawai'i Army National Guard has been resolved.

6. Adequate dust control mitigation measures shall be implemented for the duration of the quarry operation in accordance with Department of Health requirements. An adequate supply of water shall be made available for dust control.
7. Prior to commencing any land alteration activity on any un-quarried portions of the property, the Applicant shall secure the approval SHPD of an Archaeological Monitoring Plan to ensure that no historic sites are inadvertently damaged or destroyed. This plan will call for "on-call monitoring" in conjunction with SHPD. A copy of the approved plan shall be provided to the Planning Department.
8. To protect any Hawaiian hoary bats in the vicinity of the Property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be removed during bat breeding season of June 1<sup>st</sup> to September 15<sup>th</sup>.
9. To protect any Hawaiian hawk, no vegetation clearing shall occur on the Property between March 1 and October 1 unless a hawk survey is conducted by a qualified biologist. If the survey discloses the presence of nests, there shall be no vegetation clearing conducted within 100 meters of any nest.
10. All onsite personnel will be apprised that Hawaiian geese may be in the vicinity of the Property at any time during the year. If a Hawaiian goose appears within 100 feet of ongoing work, all activity will be suspended until the animal leaves the area of its own accord.
11. Prior to removing vegetation on any un-quarried portions of the Property, the Applicant shall conduct a flora study and submit it to the Planning Department for review and approval in consultation with the U.S. Fish and Wildlife Service. The Applicant shall implement any mitigation measures required by the Planning Department and provide a copy of the approved study and mitigation plan to the Planning Department.
12. No retail sale of quarrying materials is allowed from the SP site. Removal of the materials shall be limited to licensed commercial haulers or licensed contractors.
13. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the SHPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from SHPD when it finds that sufficient mitigative measures have been taken.
14. Within ninety (90) days after termination of the quarry operation or abandonment of the SP site, appropriate documentation which demonstrates compliance with the Site Restoration and Revegetation Plan shall be submitted to the Planning Department.
15. Comply with all applicable Federal, State, and County laws, rules, regulations and requirements of other affected agencies.

16. An annual progress report shall be submitted to the Planning Director and State Land Use Commission prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and extent to which the conditions of approval are being satisfied. The Applicant shall address each condition specifically and separately. This condition shall remain in effect until all of the conditions of approval have been satisfied pursuant to section 15-15-96.1, HAR, and the Planning Director acknowledges that further reports are not required.
17. An extension of time for the performance of conditions within the SP may be granted by the Planning Director upon the following circumstances:
- a. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the Applicant, successors or assigns, and that are not the result of their fault or negligence.
  - b. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - c. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - d. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
18. Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.



ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 26th day of August, 2016, per motion on August 10, 2016.

LAND USE COMMISSION

STATE OF HAWAI'I

APPROVED AS TO FORM

*Liane Jackson*  
Deputy Attorney General

By *Edmund C. Aczon*  
EDMUND ACZON  
Chairperson and Commissioner

Filed and effective on:

8/26/16

Certified by:

*[Signature]*

DANIEL E. ORODENKER  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

**In the Matter of the Petition of**

**JAS. W. GLOVER, LTD**

For A Special Permit for Quarrying and Other Support Services and Accessory Uses on 85.34 Acres of a 140.368 Acre Parcel Owned by Kamehameha Schools and Located Within the State Agricultural District, East of the Hawai'i National Guard Site and Hilo International Airport, and 3,000 Feet West of the County of Hawai'i Sewer Treatment Plant; TMK: (3) 2-1-013: 004 (por).

DOCKET NO. SP14-404

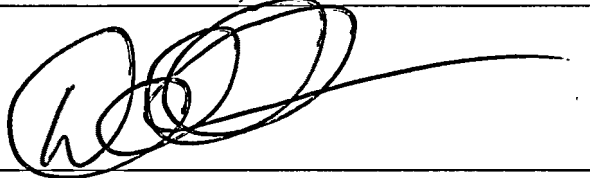
ORDER ADOPTING THE COUNTY OF HAWAI'I WINDWARD PLANNING COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER WITH MODIFICATIONS; CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that due service of the foregoing was served upon the following parties by hand delivery or certified mail on August 26, 2016, addressed to:

HAND DELIVERY	LEO R. ASUNCION, JR., Director Office of Planning State Office Tower, 6th Floor 235 South Beretania Street Honolulu, Hawai'i 96813
Regular Mail	DAWN TAKEUCHI APUNA, Esq. BRYAN YEE, Esq. Deputy Attorneys General Department of the Attorney General 425 Queen Street Honolulu, Hawai'i 96813 Attorneys for OP
Regular Mail	DUANE KANUHA, Director County of Hawai'i, Planning Department Aupuni Center 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720

Regular Mail	WILLIAM BRILHANTE, Esq. AMY SELF, Esq. Deputy Corporation Counsel Hawai'i County Planning Department Hilo Lagoon Centre 101 Aupuni Street, Unit 325 Hilo, Hawai'i 96720 Attorneys for County Planning Department
Regular Mail	WINDWARD PLANNING COMMISSION Aupuni Center 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720
Certified Mail	ROY A. VITOUSEK III, Esq. Cades Schutte LLP 75-170 Hualalai Road, Suite B-303 Kailua-Kona, Hawai'i 96740-1737 Attorney for Applicant – Jas W. Glover, Ltd



DANIEL E. ORODENKER  
Executive Officer

Dated: Honolulu, Hawai'i, August 26, 2016

William P. Kenoi  
Mayor



Charles Heaukulani, Chair  
Gregory Henkel, Vice Chair  
Joseph Clarkson  
Donn Dela Cruz  
Donald Ikeda  
Myles Miyasato  
Raylene Moses

## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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

JUN 28 2016

Mr. Bryon Fujimoto  
Jas W. Glover, Ltd.  
890 Leilani Street  
Hilo, HI 96720

Dear Mr. Fujimoto:

**Special Permit Application (SPP 14-000162)**  
**Applicant: Jas W. Glover, Ltd.**  
**Request: To Establish a New Quarry**  
**Subject: Response to Remand Order by the State Land Use Commission**  
**Tax Map Key: 2-1-013: portion of 004**

---

The Windward Planning Commission, at its duly held public hearing on June 2, 2016, discussed and acted upon a remand by the State Land Use Commission to consider additional information from the Hawai'i Army National Guard regarding new historic sites findings, boundary discrepancies affecting the permit area and modifying the Special Permit as appropriate. The project site is situated southeast of the Hawai'i National Guard Site and Hilo International Airport and approximately 3,000 feet southwest of the County's Sewer Treatment Plant Site at Honohonouui, South Hilo, Hawai'i.

The Commission considered the request and voted to send a favorable recommendation to the State Land Use Commission with proposed conditions for final disposition. The favorable recommendation is based on the following:

Since the Windward Planning Commission approved Special Permit No. 14-000162 (SPP 14-000162), new information has been presented to the LUC and Planning Department which the Planning Commission must consider to determine if the proposed land use continues to meet the criteria for granting a Special Permit. The new information includes:

- A request by the Applicant to modify conditions related to endangered species protection and add a condition requiring an annual report to the Planning Department and LUC. Condition Nos. 7-9 of the original permit were

*Hawai'i County is an Equal Opportunity Provider and Employer*

JUN 28 2016

recommendations made by the US Fish and Wildlife (USFWS) service to protect endangered and threatened species in the area. The USFWS concurred with the proposed amendments to conditions related to the Hawaiian hawk, Hawaiian Hoary Bat, and flora but recommended a new condition to protect the Hawaiian goose. USFWS stated that a one-time survey would not protect the geese since they move around often. Instead they recommend project personnel avoid any Hawaiian goose on the property until they leave on their own accord. The Director agrees with this recommendation and the Applicant's proposed amendments to these conditions.

- A request by HIARNG to consider the impact of the proposed quarry operation on archaeological sites on the adjacent Army National Guard properties, which were identified in a new archaeological report titled *Final Archaeological Inventory Survey and Monitoring Plan, Phase I, Keaukaha Military Reservation, Hawai'i Army National Guard Facility, TMK's (3) 2-1-012:003, 131 and (3) 2-1-013:010* prepared July 2014 by Cultural Surveys Hawai'i, Inc. The report indicates there are three newly identified historic properties and one previously identified historic property located within 300 meters of the HIARNG/quarry property line. The two closest sites are located within 100 meters of the property line. Two of the four sites, a remnant of the Puna Trail and a complex of possible trail markers, require preservation through avoidance according to the report. Since these sites are on Army National Guard property and over 300 feet from the property boundary, no adverse impacts to these historic sites is anticipated as a result of the quarry activities.
- A request by HIARNG for the Applicant to avoid quarry operations in an area of the disputed boundary between TMK (3) 2-1-013:010 and the subject property. The boundary discrepancy is approximately 10 feet. The Applicant has indicated they routinely use buffer zones on the perimeter of the quarry sites and they will maintain that practice on future quarry activities under SPP 14-0000162. The Applicant did not indicate how wide of a buffer zone they typically use, but according to aerial imagery the existing quarry sites on the property are no less than 80 feet from the property boundary. Therefore, it is unlikely that quarry activities would adversely affect the area of the 10-foot wide boundary discrepancy. However, out of an abundance of caution the Planning Director recommends adding a condition that the Applicant provide evidence the boundary discrepancy has been resolved prior to beginning quarry activities in the area of the discrepancy.



- A request by HIARNG for the Applicant to provide information related to how the quarry operations will comply with laws related to environmental management and hazardous materials. The Applicant has indicated they comply with all Federal, State and County laws and regulations and public reports as available for HIARNG to review. Additionally, Condition No. 13 of the original permit addresses compliance with these laws.

Special Permit No. 14-000162 continues to meet the criteria for approving a Special Permit pursuant to Chapter 205, Hawai'i Revised Statutes and Section 6-3(b)(5) (A) through (G) of the Planning Commission Rules of Practice and Procedure.

The Planning Director has considered the new information presented by the HIARNG, USFWS, and Applicant and has determined that the request to establish a new quarry site on approximately 85.338 acres of land on a portion of a larger, 140.368-acre continues to be an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

**The Director recommends the conditions of SPP 14-000162 be modified to address protection of endangered species on the property and surrounding area, to address a boundary discrepancy, and to ensure quarry operations comply with laws and regulations related to environmental management and hazardous materials. Upon approval of this request, the Planning Commission's decision will be forwarded to the State Land Use Commission for final determination.** Approval of this request is subject to the following conditions (new material is underscored and material to be deleted is struck through and bracketed):

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Prior to commencing construction of any structures, Final Plan Approval for those structure(s) shall be secured from the Planning Department in accordance with Chapter 25-2-70 (Zoning Code). Plans shall identify any proposed structures and parking associated with the proposed quarry operation.
3. Quarrying activities shall be limited to the hours of 6:00 a.m. to 6:00 p.m. daily. Work may occur at other times depending on demand, except from September 15 to December 15, which is the seabird fledging period.

4. Prior to commencement of quarry activity on any previously un-quarried land, a Site Restoration and Revegetation Plan, which assures the site will be left in a nonhazardous condition, shall be submitted for review and approval by the Planning Director. The Plan shall include photographs of the area and a topography map of the project site and its related surroundings. This Plan shall be reviewed by Kamehameha Schools, the Natural Resources Conservation Service and the Department of Public Works and their comments submitted to the Planning Director for review and approval.
5. Prior to commencement of quarry activity in the area of the disputed property boundary between TMK (3) 2-1-013:010 and the subject property (southeast corner of subject property), the applicant shall provide a letter to the Planning Department indicating the boundary discrepancy with the Hawai'i Army National Guard has been resolved.
- ~~[5.]~~6. Adequate dust control mitigation measures shall be implemented for the duration of the quarry operation in accordance with Department of Health requirements. An adequate supply of water shall be made available for dust control.
- ~~[6.]~~7. Prior to commencing any land alteration activity on any un-quarried portions of the property, the applicant shall secure approval by the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) of an Archaeological Monitoring Plan to ensure that no historic sites are inadvertently damaged or destroyed. This plan will call for "on-call monitoring" in conjunction with DLNR-SHPD. A copy of the approved plan shall be provided to the Planning Department.
- ~~[7.]~~8. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be removed during bat breeding season of June 1<sup>st</sup> to September 15<sup>th</sup> ~~[without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist].~~
- ~~[8.]~~9. To protect any Hawaiian hawk ~~[and Hawaiian goose in the vicinity of the property, vegetation clearing and beginning quarry activities shall not occur in the un-quarried areas of the permit area during hawk breeding season of March to September and goose breeding season of October to March without first conducting surveys for hawk and goose nests and coordinating with US Fish and~~

Wildlife Service if nests are found. Surveys shall be conducted by a qualified biologist], no vegetation clearing shall occur on the property between March 1 and October 1 unless a hawk survey is conducted by a qualified biologist. If the survey discloses the presence of nests, there shall be no vegetation clearing conducted within 100 meters of any nest.

10. All onsite project personnel will be apprised that Hawaiian geese may be in the vicinity of the project at any time during the year. If a Hawaiian goose appears within 100 feet of ongoing work, all activity will be suspended until the animal leaves the area of its own accord.
- [9.]11. Prior to removing vegetation on any un-quarried portions of the property, the applicant shall conduct a flora study and submit to the [U.S. Fish and Wildlife Service (USFWS)]Planning Department for review and approval in consultation with the US Fish and Wildlife Service. The applicant shall implement any mitigation measures required by [USFWS]the Planning Department and provide a copy of the approved study and mitigation plan to the Planning Department.
- [10.]12. No retail sale of quarrying materials is allowed from the project site. Removal of the materials shall be limited to licensed commercial haulers or by licensed contractors.
- [11.]13. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- [12.]14. Within ninety (90) days after termination of the quarry operation or abandonment of the project site, appropriate documentation which demonstrates compliance with the Site Restoration and Revegetation Plan shall be submitted to the Planning Department.
- [13.]15. Comply with all applicable Federal, State, and County laws, rules, regulations and requirements of other affected agencies.

16. An annual progress report shall be submitted to the Planning Director and State Land Use Commission prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and extent to which the conditions of approval are being satisfied. The applicant shall address each condition specifically and separately. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

[14.]17. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

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

[15.]18. Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

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

Mr. Bryon Fujimoto  
Jas W. Glover, Ltd.  
Page 7

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,



Charles Heanukiani, Chairman  
Windward Planning Commission

LJasGloverremandSPP14-162wpc

cc: Roy A. Vitousek III, Esq., Cades Schutte  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Land & Natural Resources - HPD  
State Land Use Commission  
Mr. Gilbert Bailado