

May 20, 2014

Roy A. Vitousek III
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Mr. Leo R. Asuncion
Acting Director
Office of Planning
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804

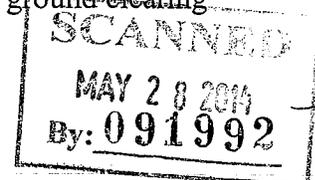
Re: Special Use Permit Application No. SPP 14-000162
to Establish New Quarry, South Hilo, Hawaii
Applicant: Jas. W. Glover, Ltd.
Tax Map Key: (3) 2-1-013:004 (por.)

Dear Mr. Asuncion:

Thank you for your comments in your letter dated April 11, 2014, to Mr. Duane Kanuha, Hawaii County Planning Department, regarding the above-referenced application. Applicant offers the following in response to your comments:

1. Comment No. 1:
 - a. In 2013, the site was evaluated by the County with regards to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes (HRS), relating to the coastal zone management. They state: "The subject property is located over one mile to the nearest shoreline 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. Additionally, there is no designated public access to the mountain areas over the property." See attached permit No. SP 12-000145.
 - b. Also attached is a copy of the response letter to Applicant's permit application SP 14-000162 from the State Historic Preservation Division (SHPD) which indicates their recommendations. If required, Applicant will provide an archaeological monitoring plan for initial ground-clearing and grubbing activities.

EXHIBIT
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Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
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Maui Office
444 Hana Highway, Suite 204
Kahului, Hawaii 96732
Tel: 808.871-6016
Fax: 808.871-6017

2. The recommendation to consolidate permits:

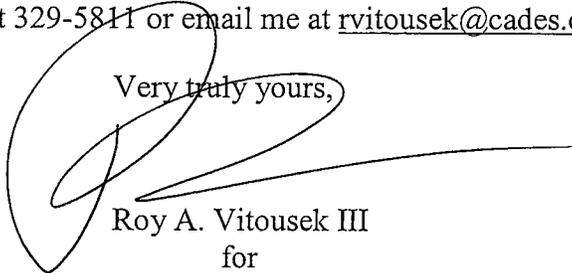
The application was intended to meet the requirement by the County Planning Department in issuance of SPP 12-000145 issued March 13, 2013, to apply for an additional permit for the unquarried remainder of the 140+ acre parcel (see condition #2 on page 8 of the permit). Active Special Permits for quarrying cover approximately 55 acres of the parcel; the additional 85 acres constitute the unquarried portions.

3. The recommendation to reclassify the parcel:

HRS allows for special permits on lands that may not be suitable for the uses permitted in the Agricultural District. Given the poor soil quality on this site, that is the process Applicant has followed in the past and the process that best fits this use on this property.

Thank you again for reviewing the application. Should you or your staff have any questions, please feel free to contact me at 329-5811 or email me at rvitousek@cales.com.

Very truly yours,



Roy A. Vitousek III
for
CADES SCHUTTE
A Limited Liability Law Partnership

RAV

attachments

cc: Majja Cottle, County of Hawaii Planning Department



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

MAR 21 2013

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

Dear Mr. Fujimoto:

Special Permit Application (SPP 12-000145)

Applicant: Jas W. Glover, Ltd.

Request: To Allow a New Quarry Site on a 10.15-Acre Portion of a
140.368 Acre Property

Tax Map Key: 2-1-013:004

The Windward Planning Commission, at its duly held public hearing on March 7, 2013, voted to approve the above-referenced request for a Special Permit to allow the establishment of a new quarry site on approximately 10.15 acres within a 140.368-acre property situated within the State Land Use Agricultural District. The project site is located east of the Hawai'i National Guard Site and Hilo International Airport and approximately 3,800 feet west of the County's Sewer Treatment Plan Site at Honohono-nui, South Hilo, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting a Special Permit to establish a new quarry site on approximately 10.15 acres of land within a portion of a larger 140-acre property. The material to be quarried is aggregate and rock for commercial applications. The material to be quarried consists largely of basaltic "blue rock" with very little cinder. Approximately 800,000 cubic yards of material will be excavated and either processed on site or transported to Glover's Hilo operations site on Leilani Street over the term of its 15-year quarry lease.

Hawai'i County is an Equal Opportunity Provider and Employer

The 140.368-acre property is owned by the Kamehameha Schools. Kamehameha Schools had previously leased a 49.9982-acre portion of the 140.368-acre property to Yamada & Sons, Inc. as a quarry site. A quarry license was granted to Jas. W. Glover, Ltd. on January 15, 2012 for the same 49.9982-acre quarry site for a period of 15 years. There have been two (2) other Special Permits (SPP 936 and SPP 1107) approved for quarry operations in this 49.9982-acre lease area. This permit request is for the remaining 10.15-acre portion of the 49.9982-acre quarry license site within the 140.368-acre property. The applicant also has a lease for the remainder of the property, which also has two (2) Special Permits (SPP 1008 and SPP 1221) for quarry operations.

At the Windward Planning Commission's February 7, 2013 meeting, the Planning Director recommended that this Special Permit request be denied as its approval would be the fifth (5th) Special Permit to be issued for sub-15-acre quarrying operations within the larger 140-acre property, raising concerns about the "parceling" of the Special Permit process in an attempt to avoid the proper process that would take this matter before the State Land Use Commission.

The State Land Use Commission (LUC), in its memorandum regarding the subject application dated February 4, 2013, stated that "The continued application for special permits on acreage below 15 acres for the same use in a relatively short period of time could be seen as an attempt on the part of the landowners or petitioners to avoid the LUC process by 'parceling' the Special Permit activities. The LUC concluded its comments by recommending that this Special Permit application and any future similar applications be referred to the LUC for action and approval/disapproval.

The applicant met recently with the staff and the Executive Director of the LUC to discuss its concerns regarding the applicant's Special Permit request. In summary, the applicant represented that the LUC was amendable towards supporting the issuance of this 10.15-acre Special Permit application with a stipulation that a Special Permit application be submitted for all quarrying activities, existing and proposed, within the 140-acre property. We support this proposal as it represents a reasonable compromise that addresses concerns about proper permit processing while also recognizing the past support by this office over the years for other quarry operations within this particular section of Hilo. As a condition of approval, the applicant will be required to submit a properly completed Special Permit application for quarrying activities within the affected property within one (1) year from the effective date of this Special Permit. Failure to promptly file this Special Permit application for consideration by the LUC will cause this department to initiate revocation proceedings for the 10.15-acre quarry that is the subject of this Special Permit.

This Special Permit request is prompted by the awareness that that the currently permitted quarries within portions of the 140-acre property are running out of material.

The proposed 10.15-acre quarry will provide the applicant with an estimated 1-½ to 2 years worth of material, during which the applicant will prepare and hope to secure a Special Permit from the LUC for quarrying activities within the remainder of the 140-acre property yet to be quarried.

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 Agricultural District. In recognizing that lands within Agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

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 the Hilo landfill.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public 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.

The property is situated within an area where soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The proposed use will be located on a 10.15-acre portion of a 140.368-acre property.

The 10.15 acres of land for quarry use and would not significantly affect the agricultural resources or potential of the area nor displace any active agricultural activity since this parcel has not been in agricultural use. 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 criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. 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 are 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.

(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. Agencies reviewing the request had no objections to the quarry.

(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 locationally restricted. Existing quarrying activities are occurring on portions of the subject property and in the near vicinity of the project. The additional quarry activities will be in keeping with surrounding uses. As such, no existing or proposed areas for agricultural activities will be curtailed or diminished as a result of establishing these activities on the property.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. As previously mentioned, the lands are rated "E" or "Very Poor" for agricultural productivity and other important ag 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 expanded uses will not substantially change the character of the land, as the area is already used for quarry activities. Additional equipment, however, will be brought on site to accommodate the proposed uses.

(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 site is located in an area designated as Extensive Agriculture. 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 affected area, this particular 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 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 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. Additionally, there is no designated public access to the mountain areas over the property.

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: The Department of Land and Natural Resources-State Historic Preservation Division issued a letter dated December 3, 2012 stating that they have completed review of the draft report (Escott, March 2012) and they requested further clarification of the possible presence of a trail alignment that may be present in the northeast corner of the proposed project area.

An archaeological assessment (final) of the project site was conducted by Glenn G. Escott dated September 2012 that conclude that no archaeological sites or features and no cultural resources or modern structures were located within the project site. The final 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 valuable cultural, historical, and natural resources found in the permit area: As mentioned, no valuable cultural, historic, or natural resources related to traditional and customary practices were identified on the site.

Possible adverse effect or impairment of valued resources: Native plants may be destroyed by quarry operations. There is no evidence that the flora in the area are particularly desired or used for cultural practices. 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.

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

There is no record of traditional Hawaiian rights being practiced on the property. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

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. The applicant, within one (1) year from the effective date of this permit, shall submit a properly filed Special Permit application to the Planning Department for consideration by the State Land Use Commission, requesting the establishment of quarry activities for the un-quarried remainder of the 140.368-acre property identified as TMK: 2-1-013: 004. Failure to comply with this condition shall result in proceedings to revoke this Special Permit.
3. The life of this Special Permit shall be co-terminus with the Kamehameha Schools License Agreement issued to Jas W. Glover, Ltd. for quarrying activities within the project site.
4. 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.
5. Quarrying activities shall be limited to the hours of 6:00 a.m. and 6:00 p.m. daily.
6. An Erosion Control and Site Restoration Plan, which assures the site will be left in a nonhazardous condition, shall be submitted for review and approval by the Planning Director, one year prior to the termination of quarry activities. 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.
7. 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.
 8. Prior to commencing any land alteration activity, the applicant shall submit an Archaeological Monitoring Plan for review to the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) to ensure that no historic sites are inadvertently damaged or destroyed. This plan will call for "on-call monitoring" in conjunction with DLNR-SHPD.
 9. 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.
 10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
 11. 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.
 12. Comply with all applicable laws, rules, regulations and requirements of other affected agencies.
 13. An extension of time for the performance of conditions within the permit, with the exception of Condition No. 2, 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.

Mr. Byron Fujimoto
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- 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).
14. 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 961-8288.

Sincerely,



Dean Au, Chairman
Windward Planning Commission

Lgloverspp12-145wpc

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

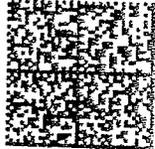
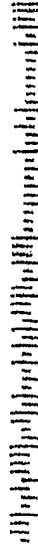


County of Hawaii
PLANNING COMMISSION
 101 Pauahi Street, Suite 3
 Hilo, Hawaii 96720-3043

RECEIVED
 JAS. W. GLOVER, LTD.
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 HILO OPERATIONS

MR BRYON FUJIMOTO
 JAS W GLOVER LTD
 890 LEILANI ST
 HILO HI 96720-4529

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PLANNING DEPARTMENT

7/14 APR 21 11:30



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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LAND
STATE PARKS

**HISTORIC PRESERVATION DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES**

601 Kamokila Boulevard, Suite 555
Kapolei, HI 96806

April 15, 2014

Duane Kanuha
County of Hawai'i Planning Department.
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Attn. Meija Cottle

LOG NO: 2014.01304
DOC NO: 1404SN19
Archaeology

Dear Mr. Kanuha:

**SUBJECT: Chapter 6E-42 Historic Preservation Review –
County of Hawai'i Special Permit to Establish a New Quarry
Waiākea Ahupua'a, South Hilo District, Island of Hawai'i
TMK: (3) 2-1-013:004**

Thank you for the opportunity to review this application that was received by our office on March 20, 2014. According to the application, a special permit is being requested to establish a quarry on the subject parcel. Our records indicate that the parcel has been subject to two archaeological inventory surveys on two separate portions of the 140-acre parcel. Our office reviewed a 2013 report for a 50-acre portion of the parcel and more recently a report for the remaining 90 acres of the parcel (*Log 2013.1788, Doc 1303SN04; Log 2014.00606, Doc 1403SN03*). No historic properties were identified as a result of this survey work.

SHPD concurred with the recommendation in the survey reports that a qualified archaeological monitor be present during initial ground clearing and grubbing. We look forward to the opportunity to review and approve an archaeological monitoring plan pursuant to HAR §13-279 for the initial ground clearing and grubbing activities associated with the quarry. With the monitoring plan in place, SHPD believes that **no historic properties will be affected** by the proposed permit.

Please contact Sean Naleimaile at (808) 933-7651 or Sean.P.Naleimaile@Hawaii.gov if you have any questions or concerns regarding this letter.

Aloha,

Theresa Donham,
Archaeology Branch Chief

cc. Kevin Moore DLNR Land Division (Kevin.E.Moore@hawaii.gov)

