County of Hawai'i

WINDWARD PLANNING COMMISSION

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JUL 2 2 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 Honohononui, 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

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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:

<u>Land Use - Industrial Element:</u>

- 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 1st to September 15th 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).

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