CADES SCHUTTE
A Limited Liability Law Partnership

ROY A. VITOUSEK III 1862-0
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Kailua-Kona, HI 96740-1737
Telephone: (808) 329-5811

Attorneys for Petitioner
JAS. W. GLOVER, LTD.

LAND USE COMMISSION
STATE OF HAWAII

2014 NOV 14 A 11: 29

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 Hawaii Sewer Treatment Plant; TMK (3) 2-1-013: 004 (por.).	SP14-404 PETITIONER'S MEMORANDUM IN SUPPORT OF APPROVAL OF SPECIAL PERMIT; EXHIBITS 1 – 4; CERTIFICATE OF SERVICE HEARING: DATE: November 20, 2014 TIME: 9:30 a.m. PLACE: Haynes Meeting Room Maui Arts and Cultural Center

PETITIONER'S MEMORANDUM IN SUPPORT OF APPROVAL OF SPECIAL PERMIT

This is an application to the Land Use Commission ("LUC") to approve a special permit for quarrying operations on 85.34 acres of the 140-acre parcel identified as Tax Map Key No. (3) 2-1-013: 004 (referenced to herein as "TMK Parcel 4"), owned by Kamehameha Schools and leased to Petitioner Jas W. Glover, Ltd. ("Glover").[1] Glover is a general contractor based in

[1] By way of context, the subject parcel has been subject to ongoing quarrying activities for several decades, is adjacent to the County of Hawaii and East Hawaii landfill site and is very near the Hilo International Airport, the County shooting range, and the Hilo drag strip and racetrack. The area was all part of the U. S. Army's Keaukaha Military Reserve before, during, and some time after World War II. This is not a remote, pristine environment.

Hilo. A significant portion of Glover's work includes constructing and repairing State of Hawaii and County of Hawaii ("County") highways. Glover operates quarrying and rock-crushing operations at or near its headquarters in Hilo, including holding special permits issued by the County Planning Commission to conduct quarrying operations on the remaining 55.03 acres of TMK Parcel 4. *See* attached **Exhibit 1**.

In the past, petitioners, such as Glover, would apply to the Planning Commission (now called the Windward Planning Commission) for special permits covering areas of less than 15 acres. Special permits for areas less than 15 acres may be issued by the Planning Commission without review and approval by the LUC. *See* Hawaii Revised Statutes ("HRS") section 205-6.

In November 2012, Glover applied to the Windward Planning Commission for a special permit covering approximately 10.15 acres within TMK Parcel 4 (SPP 12-000145). The LUC commented on the application, expressing a preference for Glover to apply for one special permit covering the entire parcel rather than sequentially applying for special permits of less than 15 acres. By agreement among Glover, the County, and the LUC, Glover agreed to apply for a special permit covering the balance of the unpermitted, unquarried areas of TMK Parcel 4 within one year of the Windward Planning Commission's approval of SPP 12-000145 for the 10.15-acre project area. This agreement became a condition of approval in the Windward Planning Commission's approval of SPP 12-000145 on March 7, 2013. *See* **Exhibit 2** hereto. On March 5, 2014, Glover filed for the instant special permit, which covered the balance of the unpermitted, unquarried areas of TMK Parcel 4.

Following the procedures outlined in HRS § 205-6, the Windward Planning Commission rules, and LUC Rules and Regulations, the instant application for special permit for the remaining 85.338 acres was filed in March 2014 with the Windward Planning Commission (SPP

14-000162) for review and approval. The Windward Planning Commission approved SPP 14-000162 on July 3, 2014, subject to LUC final disposition. The Windward Planning Commission approval included a number of conditions. *See* **Exhibit 3** attached hereto. Glover is in agreement with a majority of the conditions in SPP 14-000162 but was concerned about conditions 7, 8, and 9 (amended below as proposed conditions 7, 8, 9, and 10) to the extent these conditions could be read as requiring Glover to get approvals from the United States Fish and Wildlife Service ("USFWS"). Glover believes that the County Planning Department, not the USFWS, would have the responsibility to review and approve flora and fauna surveys and any mitigation plans.

Glover believes that the USFWS does not have regulatory jurisdiction in this context and that the Planning Department and Planning Commission could not properly defer to the USFWS or confer jurisdiction on that agency.

Consequently, Glover proposed amended conditions which provide that the County Planning Department is the agency responsible to review and approve any flora and fauna surveys and/or mitigation plans. Counsel for Glover provided draft revised conditions to the Planning Department counsel and to the LUC staff. Counsel for the Planning Department proposed some changes to the proposed amended conditions which are acceptable to Glover.

The proposed amended conditions are listed below and a complete copy of the proposed conditions, as amended, is attached as **Exhibit 4**.

Specifically, Glover asks the LUC to modify conditions 7, 8, and 9 (shown below as proposed conditions 7, 8, 9, and 10) and to add a new condition 16 in the final disposition of this special permit application as follows:

. . .

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 unquarried 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~~, no vegetation clearing shall occur on the property between March 1 and October 1 unless a hawk survey is conducted. If the survey discloses the presence of nests, there shall be no vegetation clearing conducted within 100 meters of any nest.

9. To protect any Hawaiian goose, a one-time survey should be conducted by a qualified biologist. The survey will be submitted to the Planning Department for review and approval in consultation with the U. S. Fish and Wildlife Service ("USFWS").

~~9.~~10. 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 USFWS. 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.

. . .

16. The applicant will submit annual status reports to the Planning Department and the Land Use Commission.

. . .

Glover is fully committed to taking appropriate measures to protect any endangered plant or animal species which may be located on TMK Parcel 4. Specifically, Glover is willing to commit to completely avoid removal of vegetation over 15 feet in height from June 1 to September 15, which are recognized as nesting times for the ʻōpeʻapeʻa, or Hawaiian hoary bat.

Glover is committed to conducting surveys for Hawaiian hawk nests before conducting any land clearing in the months of March through September. Glover is committed to refrain from conducting ground clearing or quarrying activities within 100 feet of an `io (Hawaiian hawk) nest. Glover is committed to conduct one-time surveys for nēnē (Hawaiian goose) and for endangered plant species on the property before conducting ground-clearing activities.

The proposed amended conditions would provide the same degree of protection to endangered species as the conditions currently incorporated in SPP 14-000162 specified by the Windward Planning Commission.

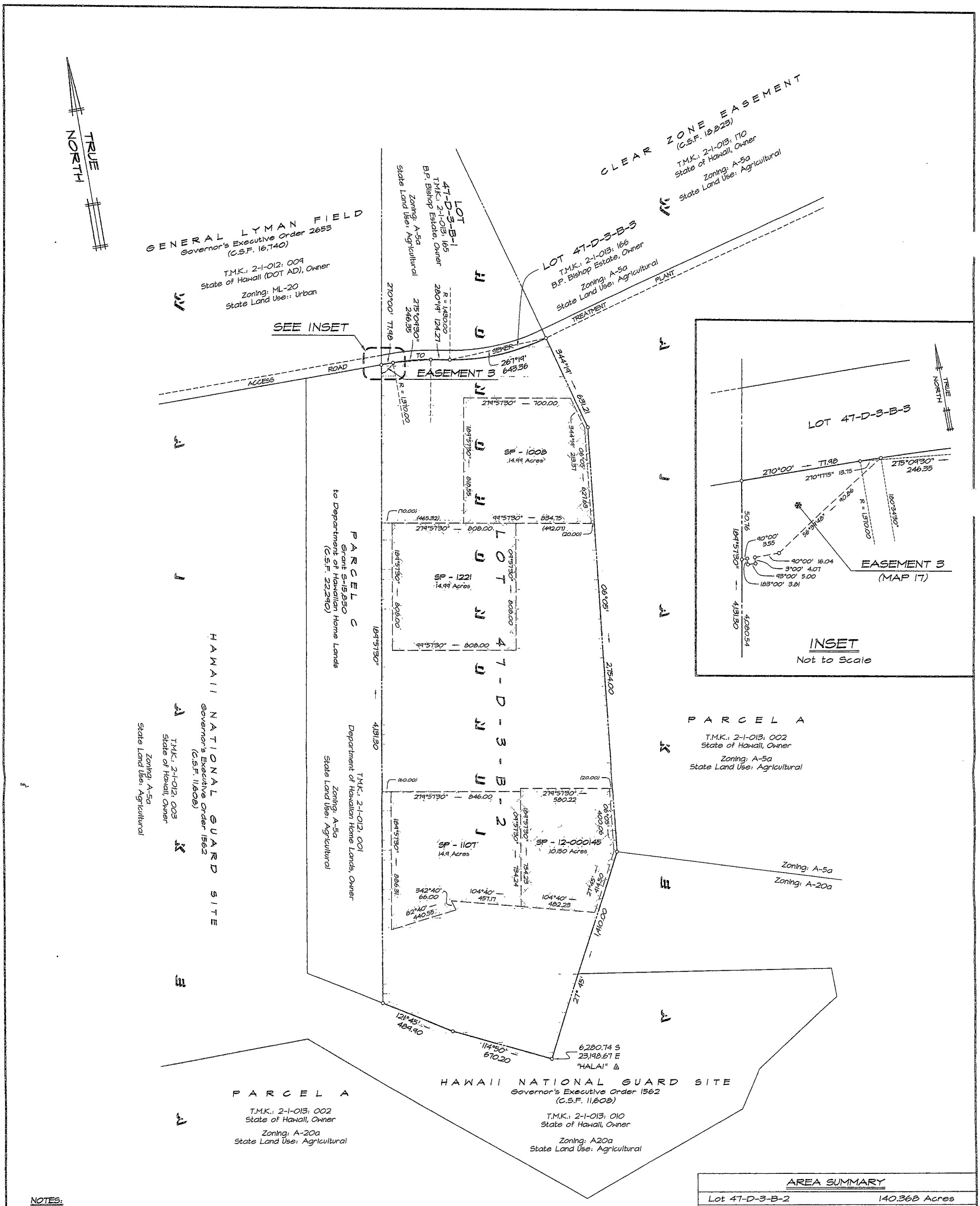
Under Glover's proposed revised conditions, the County Planning Department would have the responsibility to review and approve the results of flora and fauna surveys and/or any mitigation plan to determine compliance with the conditions in the special permit. The County Planning Department can consult with the USFWS before acting.

Based on the foregoing, it is respectfully requested that the LUC approve the application for special permit with amended conditions as proposed by Glover.

DATED: Kailua-Kona, Hawaii, November 13, 2014.

CADES SCHUTTE
A Limited Liability Law Partnership

ROY A. VITOUSEK III
Attorneys for Petitioner
JAS. W. GLOVER, LTD.



NOTES:

1. Adjacent property ownership shown is from County of Hawaii Real Property Tax Office Site.
2. Zoning designation and state land use designation obtained from County of Hawaii Arc Reader.
3. Land Use Pattern Allocation Guide (LUPAG) designation obtained from County of Hawaii Arc Reader. Designation is Extensive Agricultural (ea) and Important Ag. Lands (ial).
4. Site is with in Zone X, areas determined to be outside of the 0.2% annual chance floodplain. No baseflood elevations or depts are shown within this zone. Site is on Flood Insurance Rate Map, Community-Panel Number 155166 0885 C, Map Revised: September 16, 1988.

AREA SUMMARY	
Lot 47-D-3-B-2	140.368 Acres
SP - 1008	14.99 Acres
SP - 1221	14.99 Acres
SP - 1107	14.9 Acres
SP - 12-000145	10.150 Acres
Remainder Lot 47-D-3-B-2	85.338 Acres

PROJECT SITE

REMAINDER OF LOT 47-D-3-B-2 OF LAND COURT APPLICATION 433 AS SHOWN ON MAP 16

IN THE 'ILI OF HONOHONONUI
SOUTH HILO, ISLAND OF HAWAII, HAWAII
Tax Map Key: 3rd DIV. 2-1-013: 004

PREPARED FOR:
Jas. W. Glover, Ltd.
890 Leilani Street
Hilo, Hawaii 96720

OWNER:
B. P. Bishop Estate
567 South King Street, Suite 200
Honolulu, Hawaii 96813

GRAPHIC SCALE
300 0 150 300 600 1200
(IN FEET)

INABA ENGINEERING, INC.
273 Waianuenue Ave.
Hilo, Hawaii 96720

ALAN Z. INABA
LICENSED PROFESSIONAL LAND SURVEYOR
No. 5626
HAWAII, U.S.A.

This work was prepared by me or under my supervision.

Alan Z. Inaba
Licensed Professional Land Surveyor
Certificate Number 5626
License Expires: April 30, 2014
Land Court Surveyor Number 249
February 21, 2013
Revised: February 20, 2014

IEI #13005

13005-JWGlover.dwg

Exhibit 1

CADES SCHUTTE

MAR 22 2013

Time_____m. Init.___

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.

Exhibit 2

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 0 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.

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

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 Hawai'i

WINDWARD PLANNING COMMISSION

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

RECEIVED
JAS. W. GLOVER, LTD.
14 JUL 24 AM 7:59
HILO OPERATIONS

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

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

Suggested Edits to Conditions of Approval in Planning Department Letter Dated 7/22/14

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 unquarried 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~~

Exhibit 4

~~hawk and goose nests and coordinating with US Fish and Wildlife Service if nests are found. Surveys shall~~, no vegetation clearing shall occur on the property between March 1 and October 1 unless a hawk survey is conducted. If the survey discloses the presence of nests, there shall be no vegetation clearing conducted within 100 meters of any nest.

9. To protect any Hawaiian goose, a one-time survey should be conducted by a qualified biologist. The survey will be submitted to the Planning Department for review and approval in consultation with the U. S. Fish and Wildlife Service ("USFWS").

~~9.~~10. 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 USFWS. 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.~~11. 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.~~12. 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~~SHPD 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.~~13. 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.~~14. Comply with all applicable laws, rules, regulations and requirements of other affected agencies.

~~14.~~15. 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).

16. The applicant will submit annual status reports to the Planning Department and the Land Use Commission.

~~15.~~ 17. 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.

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 Hawaii Sewer Treatment Plant; TMK (3) 2-1-013: 004 (por.).	SP14-404 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was served on this day, by Certified Mail, upon the following at the addresses shown:

Myles Miyasato, Chairman
Windward Planning Commission
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

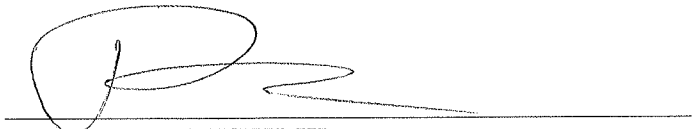
Duane Kanuha
Planning Director
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

William V. Brilhante, Jr.
Office of Corporation Counsel
County of Hawaii
333 Kilauea Avenue, Floor 2
Hilo, Hawaii 96720

Attorney for Planning Director

DATED: Kailua-Kona, Hawaii, November 14, 2014.

CADES SCHUTTE
A Limited Liability Law Partnership



ROY A. VITOUSEK III
Attorneys for Petitioner
JAS. W. GLOVER, LTD.