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County of Hawai'i

WINDWARD PLANNING COMMISSION

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JUN 28 2016

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

Dear Mr. Fujimoto:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Charles Heanukiani, Chairman
Windward Planning Commission

LJasGloverremandSPP14-162wpc

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