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2019 OCT 7 12:44

DTS201910031309BE

October 3, 2019

TO: Daniel Orodener, Executive Officer
Land Use Commission

FROM: Mary Alice Evans, Director *Mary Alice Evans*
Office of Planning

SUBJECT: Docket No. A19-807/Trustees of the Estate of Bernice Pauahi Bishop dba
Kamehameha Schools
Sanford's Service Center Leilani Quarry
Environmental Impact Statement Preparation Notice
Kauaea, Puna, Hawaii
TMK: (3) 1-3-009: por. 005

Thank you for the opportunity to comment on the subject Environmental Impact Statement Preparation Notice (EISPN).

Background

Sanford's Service Center, Inc. (Petitioner) is currently engaged in mining and quarrying operations on 30 acres within a 694.5-acre parcel owned by the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools (KS). Approximately two-thirds of the parcel, including the site of Petitioner's current operation, is within the State Land Use Conservation District (Limited Subzone). The remainder of the parcel is within the State Agricultural District.

The Petitioner has a Conservation District Use Permit for the mining and quarrying activity issued by the Board of Land and Natural Resources in 2008. In 2011, Conservation District Rules were changed to allow mining as a permitted activity only in the Resource Subzone (R) of the Conservation District. Consequently, Petitioner's mining operation, previously permitted in the Limited (L) Subzone, became grandfathered as a legal non-conforming use. The quarry produces a low-density type of black-colored cinder highly valued by the nursery industry and is almost exclusively used by Hawaii Island nurseries. Under the current Permit, Petitioner's operation can continue but is not allowed to expand. Petitioner estimates that the remaining life of the existing quarry is six (6) months.

Proposed Action

To expand its mining operation, the Petitioner proposes to reclassify approximately 94.107 acres (Petition Area) at the western end of the 694.5-acre parcel owned by KS from the State Conservation District to the Agricultural District. The Draft Environmental Impact Statement (DEIS) is being prepared to support the reclassification.

Within the Petition Area, the Petitioner has a license from KS to mine on 73.075 acres (License Area). If the State Land Use Commission (LUC) approves the State Land Use reclassification, the Petitioner intends to seek a Special Permit from the County of Hawaii and the LUC to allow mining operations on the License Area within the State Agricultural District. The remaining 21.033 acres of the Petition Area would serve as a buffer from adjacent forested areas. The Petition Area is zoned Ag-20a by Hawaii County, and mining or quarrying is a permitted activity in the County Agricultural District with a Special Permit.

Petition Area

Lands surrounding the Petition Area are mainly vacant and forested. To the north of the Petition Area are Leilani Estates subdivision lots along Malama Street. Near the southern boundary of the Petition Area are several homesteads and farms along Malama Road and Kamaili Road. The property west of the Petition Area and the remainder of the KS parcel containing the Petition Area is vacant. The Petition Area is accessed by a private road extending from Keaau-Pahoa Road (State Route 130), crossing two privately-owned parcels.

Adjacent to eastern border of the Petition Area is the Puu Kaliu summit. The Petitioner's lease with KS prohibits impacts to the Puu Kaliu summit, including the overall profile of the cinder cone, and other historic and natural resources in the area. In addition, Petitioner's mining license agreement expressly prohibits mining Puu Kaliu. The U.S. Geological Survey classifies the Petition Area, almost entirely located within the East Rift Zone of Kilauea Volcano, as within Lava Flow Hazard Zone 1. During the 2018 eruption, lava and gases flowed from several fissures in the lower East Rift Zone, particularly Fissure 8 located in Leilani Estates, approximately 0.7 miles northeast of Puu Kaliu.

OP Comments - State Land Use District Reclassification and Special Permit

The Office of Planning has reviewed the EISPN and has the following comments:

1. The DEIS should provide a figure showing the location of the existing mining operation within the Petition Area and the Petition Area within the larger KS 694.5-acre parcel.

2. The EISPN notes that a change of Conservation District subzone from Limited (L) to Resource (R) would allow mining and extraction under an approved management plan with a Land Board permit. The DEIS should discuss this alternative in detail and provide an explanation as to why this alternative would not meet the Petitioner's needs and objectives.
3. The Petitioner is seeking a reclassification from the State Conservation to Agricultural District. The DEIS should discuss the existing inventory of conservation resources (habitat, watershed areas, etc.) and how the loss of these resources will impact the public. In particular:
 - a) The EISPN states that there are no surface water features in the area and that the DEIS will discuss water quality impacts. Since mining is a soil-disturbing activity, potential impact on ground water resources should also be discussed.
 - b) The EISPN mentions that forests near the Petition Area are dominated by ohia. The impact of mining activity on the spread of rapid ohia death should be discussed, including mitigation, if necessary, to prevent the expansion of mining operations (employees and machinery) from spreading the disease.
 - c) The EISPN states that the lease with KS prohibits impacting the Puu Kaliu summit and overall profile of the cinder cone. Petitioner's license agreement with KS is also mentioned. The provisions of Petitioner's lease and license agreements with KS should be included as an appendix in the DEIS.
 - d) The EISPN states that the estimated remaining life of the existing quarry is six months. The DEIS should describe measures taken to remediate land conditions after cinder resources are exhausted.
4. The Petitioner is seeking a reclassification from the Conservation to Agricultural District, and will subsequently, also seek a Special Permit to allow mining in the Agricultural District. The Special Permit guidelines for determining "unusual and reasonable use" should be discussed in the DEIS. The DEIS should provide details on the unique nature of the cinder-type being mined and its value to the nursery industry. In addition, details on the mining operation, equipment used, hours of operation, number of employees, safety precautions, amount of cinder excavated, and marketability of the product should also be provided.
5. The EISPN states that a Cultural Impact Assessment for the Petition Area was completed in 2015 and updated in 2019. Please note that, pursuant to the Hawaii Supreme Court's ruling in *Ka Paakai O Ka Aina v. Land Use Commission*, specific findings are required regarding the extent to which traditional and customary native Hawaiian rights are exercised in the Petition Area; the extent to which these native Hawaiian rights will be

affected by the proposed action; and the feasible action, if any, to be taken by the Petitioner to reasonably protect native Hawaiian rights if they are found to exist.

6. The ESPN mentions an Archaeological Inventory Survey (AIS), completed in 2012, a subsequent Site Preservation Plan (SPP), and approval of the AIS and the SPP by the State Historic Preservation Division (SHPD) on September 23, 2013 and on June 24, 2014, respectively. The DEIS should discuss whether the 2012 AIS is sufficient in scope and detail to assess the impacts of the proposed mining operation, and whether SHPD still considers the SPP valid. Copies of SHPD letters should be included in the DEIS.
7. The DEIS should discuss the consistency of the mining operation and State Land Use reclassification with the Puna Community Development Plan.

Drainage/Stormwater Runoff Controls/Low Impact Development

8. OP acknowledges that hydrology and water quality issues will be covered in the DEIS (EISPN, pg.11). Furthermore, the EISPN states that as mining is a soil-disturbing activity the potential for water quality impacts due to sediment-laden storm water runoff exists, as well as from other sources including contaminants associated with heavy equipment and other sources, solids from tire and pavement wear, brake show and drum wear, rust, exhaust, etc. We note that the DEIS will discuss erosion control measures and mitigation of impacts that may affect water quality.

Pursuant to Hawaii Administrative Rules (HAR) § 11-200-17(i) – probable impact of the proposed action on the environment and impacts of the natural and human environment – to ensure that the coastal resources in the Puna District of Hawaii Island remain protected, the negative effects of stormwater inundation ensuing from development activities within the project site should be evaluated.

Hawaii State Planning Act

9. OP acknowledges that the DEIS will contain a discussion of the proposed project's relevancy with the applicable State Plan goals, objectives, policies, and priority guidelines (EISPN, pg. 19), and that the DEIS will include a discussion of applicable Functional Plans (EISPN, pg. 20).

Included in the DEIS assessments of the applicable provisions of HRS Chapter 226 with this proposed action, the DEIS should also consider the priority guidelines as found in Part III of the Hawaii State Planning Act.

Mr. Daniel Orodener
October 3, 2019
Page 5

Hawaii Coastal Zone Management (CZM) Program

10. OP acknowledges that the DEIS will address the conformity of the project with the relevant sections of Hawaii Revised Statutes (HRS) Chapter 205A (EISPN, pg. 20). We note that compliance with these objectives and supporting policies of the CZM Program, as embodied in HRS 205A-2 is a vital component for satisfying the requirements of HRS Chapter 343.

If you have any questions regarding these comments, please contact Aaron Setogawa of our Land Use Division at (808) 587-2883, or Joshua Hekeia of our CZM Program at (808) 587-2845.

cc. Sanford Iwata, Sanford's Service Center, Inc.
Graham Knopp, GK Environmental LLC