

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

August 10, 2016

Commencing at 9:30 a.m.

AIRPORT CONFERENCE CENTER

400 Rogers Blvd., Suite 700

Honolulu, HI 96819

HEARING AND ACTION

SP14-404 JAS. W. GLOVER (Hawai'i)

To Consider a Request for Special Permit for quarry 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 3000 feet west of the County of Hawai'i's Sewer Treatment Plant; Tax Map Key Nos.: (3) 2-1-013:004 (por.)

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 CHAIR EDMUND ACZON
3 VICE CHAIR JONATHAN SCHEUER
4 VICE CHAIR ARNOLD WONG

5 COMMISSIONERS:

6 LINDA ESTES
7 GARY OKUDA
8 DAWN N.S. CHANG
9 NANCY CABRAL
10 KENT HIRANAGA

11 DIANE ERICKSON, ESQ.
12 Deputy Attorney General

13 STAFF:

14 DAN ORODENKER, Executive Director
15 SCOTT A.K. DERRICKSON, AICP-Planner
16 RILEY HAKODA, Chief Clerk/Planner
17 BERT SARUWATARI, Planner

18 SP14-404 JAS. W. GLOVER (Hawai'i)

19 RANDY VITOUSEK, ESQ.

20 For Applicant James W. Glover

21 DAWN TAKEUCHI APUNA, ESQ.
22 Deputy Attorney General
23 RODNEY FUNAKOSHI, Planner

24 For State Office of Planning
25

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Michael Pearing	20
Rodney Funakoshi	24

1 CHAIRPERSON ACZON: Good morning. This is
2 the August 10th, 2016 Land Use Commission Meeting.

3 First order of business is the adoption of
4 the June 8th and 9th, 2016 minutes. Are there any
5 corrections or comments on them? If not, is there a
6 motion?

7 VICE CHAIR SCHEUER: So moved.

8 COMMISSIONER ESTES: Second.

9 CHAIRPERSON ACZON: The motion has been
10 made my Commissioner Scheuer and seconded by
11 Commissioner Estes.

12 All in favor, say "Aye". Any opposed? The
13 minutes are adopted unanimously.

14 The next agenda item is the tentative
15 meeting schedule. Mr. Orodener.

16 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.
17 Our next meeting is a video conference for adoption
18 on the order of SP-14-404, that's August 25th. It
19 will be held here in Oahu for the Commissioners who
20 are here at our conference room, and then there will
21 be notice given for the locations for the neighbor
22 islands.

23 September 7th is Robinson, IAL. Kauai site
24 visit and hearing on Kaua'i, State Office Building.

25 And on September 21st through the 23rd we

1 will be at HCPO at Poipu Grand Hyatt on Kaua'i. On
2 the 23rd in the afternoon there will be a meeting in
3 the Grand Ballroom for adoption of the order on the
4 aforementioned IAL. There will a presentation on
5 sustainability by the Blue Zone Group.

6 October 12th and 13th is still to be
7 determined. And going forward, nothing on the agenda
8 until November 9th and 10th, which is the remand
9 special hearing, the Lana'i hearing -- on the Lana'i
10 case with the Hearings Officer only. That's not a
11 Commission meeting.

12 And that's it for the rest of the year.

13 CHAIRPERSON ACZON: Thank you, Mr.
14 Orodénker.

15 Commissioners, do you have any questions?

16 The Chair would like to note that the next
17 hearing on Kauai on September 7, 2016 will require
18 that the Commission provide meals for a "working"
19 lunch as an integral part of the meeting due to the
20 site visit to a remote locale and the time
21 constraints that it will place on the Commission to
22 hold its meeting.

23 Mr. Orodénker, would you please ensure that
24 the necessary arrangements are made to accommodate
25 the "working lunch"?

1 EXECUTIVE DIRECTOR: Yes, we will arrange
2 that.

3 CHAIRPERSON ACZON: Thank you.

4 At this time the Chair would like to
5 entertain a motion to amend the agenda to take the
6 portion of the Executive Session to consult with
7 Commissioner's Attorney Bill Wynhoff regarding the
8 Commission's duties, rights, responsibilities and
9 obligations with respect to the Bridge Aina Lea
10 Settlement at this time, out of sequence to
11 accommodate the time constraints that Mr. Wynhoff is
12 confronted with today.

13 The other agenda items will remain in their
14 respective positions on our agenda.

15 VICE CHAIR WONG: Moved.

16 COMMISSIONER CHANG: Second.

17 CHAIRPERSON ACZON: Motion made by
18 Commissioner Wong and seconded by Commissioner Chang
19 to take only the portion of the Executive Session
20 concerning Mr. Wynhoff's presentation on Bridge Aina
21 Lea out of sequence at this time, with the balance of
22 the agenda remaining in their normal sequence.

23 Any discussion? If no further discussion,
24 all those in favor of amending the agenda? All
25 opposed? Motion carries.

1 The Chair will now entertain a motion to
2 enter Executive Session to consult with
3 Commissioner's Attorney Bill Wynhoff, regarding the
4 Commission's duties, rights responsibilities and
5 obligations with respect to the Bridge Aina Lea
6 Settlement. Commissioners, any motion?

7 VICE CHAIR WONG: Move.

8 COMMISSIONER CHANG: Second.

9 CHAIRPERSON ACZON: Motion made by
10 Commissioner Wong and second by Commissioner Chang
11 for an Executive Session.

12 All in favor say "aye", opposed? Motion
13 carries. Thank you.

14 (Executive Session from 9:36 a.m. to 11:19
15 a.m.)

16 CHAIRPERSON ACZON: Back on the record.

17 Good morning, again.

18 The next agenda item action meeting on
19 Docket No. SP14-404 Jas. W. Glover (Hawai'i) to
20 Consider a Request for Special Permit for quarry and
21 other support services and accessory uses on 85.34
22 acres of a 140.368 acre parcel owned by Kamehameha
23 Schools and located within the State Agricultural
24 District, East of the Hawai'i National Guard Site and
25 Hilo International Airport, and 3000 feet west of the

1 County of Hawai'i's Sewer Treatment Plant at
2 Honohononui, Waiakea, South Hilo, Island of Hawai'i,
3 Tax Map Key Nos.: (3)2-1-013:004 (por.)

4 Will the Applicant or its representatives
5 please identify themselves for the record?

6 MR. VITOUSEK: Good morning. I'm Randy
7 Vitousek. I'm the attorney for the Applicant, which
8 is James Glover, Ltd. With me are John Romanowski,
9 Keoki van Orden and Mike Pearing, James Glover.

10 MS. APUNA: Good morning, Deputy Attorney
11 General Dawn Takeuchi Apuna on behalf of the Office
12 of Planning. Here with me is Rodney Funakoshi.

13 CHAIRPERSON ACZON: For interest of time,
14 the record is on the website, so we're just going to
15 proceed with the hearing.

16 The Chair would like to take judicial
17 notice that all Commission persons except
18 Commissioners Cabral, Chang and Okuda were at the
19 November 24th, 2014 hearing. However, Commissioners
20 Cabral, Chang and Okuda have been provided with all
21 the transcripts, minutes and submitted materials
22 related to this docket for their review in
23 preparation for this hearing.

24 Commission Cabral, will you confirm that
25 you have reviewed all the materials provided to you

1 relating to this document and that you're prepared to
2 participate in these proceedings?

3 COMMISSIONER CABRAL: Yes, I have read it
4 and I am prepared.

5 CHAIRPERSON ACZON: Thank you.

6 Commissioner Chang?

7 COMMISSIONER CHANG: Yes, I have read it
8 and I am prepared.

9 CHAIRPERSON ACZON: Thank you.

10 Commissioner Okuda?

11 COMMISSIONER OKUDA: I have and I'm
12 prepared to deal with this matter.

13 CHAIRPERSON ACZON: Thank you.

14 Let me briefly describe our procedure for
15 today on this docket.

16 First, I will call for those individuals
17 desiring to provide public testimony to identify
18 themselves. All such individuals will be called in
19 turn to our witness box where they will be sworn in
20 prior to their testimony.

21 After completion of the public testimony
22 portion of the proceedings, the Applicant will make
23 its presentation.

24 After the completion of the Applicant's
25 presentation, we will receive any public comments

1 from the State Office of Planning since we will not
2 be receiving any public comments from the Hawai'i
3 County Planning Department.

4 After we receive public comments from the
5 State Office of Planning, the Commission will conduct
6 its deliberations.

7 The Chair would also note that from time to
8 time, I will be calling for short breaks. Are there
9 any questions on our procedure for today?

10 MR. VITOUSEK: None.

11 MS. APUNA: No.

12 CHAIRPERSON ACZON: Is there anyone in the
13 audience desiring to provide public testimony on this
14 docket?

15 EXECUTIVE DIRECTOR: Mr. Chair, we don't
16 have anyone.

17 CHAIRPERSON ACZON: Mr. Vitousek, please
18 proceed with your presentation.

19 MR. VITOUSEK: Thank you.

20 If I may, this is an application by James
21 Glover for a permit to conduct quarrying operations
22 on an 85-acre portion of a parcel of land located in
23 the Honohononui of the Waiakea Ahupua'a in Hilo.

24 This application has an interesting
25 history. Glover already has four Special Permits of

1 less than 15 acres in this same parcel.

2 In 2012, Glover applied for a Special
3 Permit for a ten-acre parcel in this same area that,
4 because that was an application of less than
5 15 acres, it's directed to the Hawaii County Planning
6 Commission, and does not go in front of the Land Use
7 Commission.

8 The Land Use Commission commented on that
9 application saying that their preference would be for
10 an application for a larger portion to come to the
11 Land Use Commission.

12 In other words, rather than have sequential
13 applications of less than 15 acres, the Land Use
14 Commission felt it was a better policy for the
15 Applicant to come in on the balance of the unquarried
16 areas.

17 And so an agreement was basically reached
18 between the Land Use Commission staff and the
19 Planning Department that allowed Glover to go ahead
20 and apply for the Special Permit for the ten-acre
21 parcel to the County Planning Commission, and then
22 within one year, submit an application to the
23 Planning Commission and the Land Use Commission to
24 get a Special Permit on the balance of the 85 acres
25 that had not yet been quarried.

1 So that application was filed within a
2 year. It went before the County Planning Commission,
3 was approved by the County Planning Commission for a
4 favorable recommendation to the Commission. It came
5 up to the Commission, the hearing was scheduled for
6 November 20th, 2014.

7 On November 18th, 2014, the State of Hawaii
8 Department of Defense, the National Guard, submitted
9 a letter to the Land Use Commission which raised
10 issues with respect to a couple of historical sites
11 that were identified in archaeological inventory
12 conducted by the Department of Defense that were
13 located on the Department of Defense property, but
14 close to the quarry site. So that issue came up.

15 Another issue was raised by Department of
16 the Army about a potential boundary dispute. And so
17 we came before the Commission with the Department of
18 Army having recently raised those issues, and
19 understandably the Commissioners had some questions
20 about those issues and about the fact that the
21 Applicant was requesting modification of some of the
22 conditions that related to the measures to protect
23 endangered bird species.

24 In other words, the conditions as proposed
25 by the Planning Commission would require approval of

1 plans by the U.S. Fish and Wildlife Service. We felt
2 that more appropriately that the subsequent approval
3 should be by the Planning Department with
4 consultation with Fish and Wildlife Service, because
5 the federal government doesn't really have any
6 jurisdiction in that context.

7 At any rate, we came before the Commission
8 and we agreed that we would go back down to the
9 Planning Commission and take additional evidence on:

10 One, on the endangered species protection
11 conditions.

12 Secondly, on the issues raised by the Army.

13 And third, some of the Commissioners raised
14 concerns relative to compliance with the requirements
15 of the Ka Pa'a Kai O Ka Aina v Planning Commission
16 decision.

17 They were requesting additional information
18 about potential cultural use of the subject property.

19 So we went back down to the Planning
20 Commission. Like I say, the hearing before the Land
21 Use Commission was November 20th. January 2015,
22 Glover wrote to the Department of Army with respect
23 to the boundary dispute issue.

24 In August of 2015, we submitted a
25 supplemental archeological evaluation of the sites

1 that were identified by the army. It was shown that
2 those sites were located about 300 feet into the army
3 property from the -- not on the property that was
4 subject to the Special Permit application. The
5 nature of the sites was, two of them were recommended
6 for preservation, two other sites were recommended
7 for no further action.

8 So that information was submitted to the
9 Planning Department. We then asked ASM, Bob
10 Rechtman, to do an a Ka Pa'a Kai assessment on the
11 subject property. In other words, do a historical
12 study and to look at the history of different
13 archeological studies and to look at the ethnographic
14 study that was done by the Edith Kanaka'ole
15 Foundation with respect to the Ili of Honohononui
16 under contract with the Assessment Management, or
17 Land Management Division of Kamehameha Schools.

18 So Dr. Rechtman put together a Ka Pa'a Kai
19 analysis that looked at what the resources and
20 features were on the subject property. Evaluated the
21 extent to which those resource features were
22 important to native gathering rights, evaluated
23 whether there were any native gathering rights on the
24 property, and concluded that there were not
25 significant resources on the property that were

1 subject to gathering and not been significant
2 gathering or other cultural practices exercised on
3 the subject property.

4 It's important to note that this property
5 is been part of the Keaukaha Military Reserve
6 historically. This property is bordered by the
7 county landfill, the sewage treatment plant, the
8 skeet range and the army property and the General
9 Lyman Field.

10 So it's not a property that is in a remote
11 area and involves a particularly significant
12 environment. Much of it has been used for army
13 activity in the past.

14 At any rate, that report was submitted to
15 the Planning Commission on April 8th of 2016, the
16 Hawaii County Planning Commission. And the Planning
17 Commission contacted the army to see if this
18 addressed their concerns or if they had any
19 additional issues.

20 The hearing on the remand before the
21 Planning Commission was set for June 2nd at
22 9:00 a.m., and nothing was heard from the army until
23 an email was received at 8:00 a.m. on June 2nd,
24 saying that the army didn't have any further concerns
25 and that we had addressed their considerations.

1 So that was quite a long process on remand.
2 And a lot of additional information was generated.
3 And their letter said that -- the army email said
4 we're not going to submit a letter, but this has
5 addressed our concerns.

6 So we're back before the Land Use
7 Commission. The county has again given a favorable
8 recommendation. The record now before the Commission
9 has been supplemented significantly by Ka Pa'a Kai
10 analysis, by additional archeological work on these
11 adjacent sites.

12 I should also say, it's important that the
13 U.S. Fish and wildlife Service agreed with the
14 proposed changes to the conditions to protect the
15 native species. And so we now are coming back in
16 front of the Land Use Commission with agreement among
17 the U.S. Fish and Wildlife Service, the county, and
18 the applicant as to the conditions to protect the
19 bats, the hawk, and the nene.

20 And we made an agreement to do a full
21 flora-fauna study before initiating any further
22 ground clearing activity. I think the applicant has
23 really done everything possible to come before the
24 Commission again with a complete record,
25 understanding of the issues raised by the

1 Commissioners when we were here before, and their
2 need to feel that there was sufficient information on
3 the record to exercise their discretion under the
4 statute.

5 And we're back here just asking the Land
6 Use Commission to approve the Special Permit
7 Application. Thank you.

8 CHAIRPERSON ACZON: Thank you.

9 Commissioners, do you have any questions
10 for Mr. Vitousek?

11 COMMISSIONER CHANG: Could I just -- could
12 you confirm that the Puna Trail -- the Puna Trail, is
13 that outside the boundaries of your property?

14 It's hard to tell from the maps. That's --
15 I just wanted to confirm that that's your
16 understanding.

17 MR. VITOUSEK: That is completely my
18 understanding. And I brought along a blow up of one
19 of the exhibits from the ASM affiliates report that
20 is basically a blowup of the 1931 map that shows the
21 trails. And I can share that with you if you want.

22 Basically it shows -- all the maps that
23 show that the Puna Trail is located outside of the
24 subject property. And that's -- I think that's
25 actually been very consistent.

1 This map just happened to be one of the
2 most clear ones, and it was a 1931 map. And we felt
3 that was a good indicator that the people believed
4 the trail was there long before anybody had any plans
5 to use or develop this portion of the property.

6 COMMISSIONER CHANG: Thank you. I just
7 wanted to confirm that.

8 The second point, I really do applaud the
9 Applicant for doing the additional Ka Pa'a Kai
10 analysis. I thought that was -- appreciated that.
11 In my view I think there was a very good
12 historical -- provided a good historical foundation
13 for the resources and the activities on the property.
14 I appreciated reading the EKF, ethnographic summaries
15 that were included in there.

16 Two points I would like to make.

17 One, I think in my view the constitution
18 and Ka Pa'a Kai, it is about protecting and
19 preserving traditional customary practices for
20 future. It's not only documenting what happened in
21 the past, it is about, you know, identifying what are
22 those resources that may be on the property for
23 future uses.

24 So I think, while the Ka Pa'a Kai analysis
25 was a very good archival research, provided good

1 documentation.

2 Again, for me it was what are those future
3 uses. I know that the ethnographic study was done,
4 so that provides some additional testimony, which is
5 helpful.

6 The one thing I did notice came out of both
7 Ka Pa'a Kai as well as EKF was the issue related to
8 balancing, and it was the reforestation, and needing
9 to -- maintaining a balanced environment from a
10 cultural perspective with respect to natural and
11 environmental zones and the water recharge cycle.

12 I have never been out on the site. I don't
13 know what it looks like. I suspect it's a quarry,
14 very industrialized section.

15 But reading the recommendations or the Ka
16 Pa'a Kai analysis and EKF ethnographic, is there a
17 possibility of planting more trees on that site to
18 assist the environmental recharge?

19 MR. VITOUSEK: Well, I'm not sure. Right
20 now --

21 MR. PEARRING: We are actually working with
22 Kamehameha on plans for --

23 CHAIRPERSON ACZON: Could you come up?

24 MR. VITOUSEK: This is Michael Pearring,
25 on-site manager for the Hilo operation.

1 CHAIRPERSON ACZON: Let me swear you in
2 first.

3 Do you swear that the testimony that you're
4 about to give is the truth?

5 THE WITNESS: Yes.

6 MICHAEL PEARRING
7 Was called as a witness by and on behalf of the
8 Applicant, was sworn to tell the truth, was examined
9 and testified as follows:

10 CHAIRPERSON ACZON: Please state your name
11 and address.

12 THE WITNESS: Michael Pearring, P.O. Box
13 871, Papakea, Hawaii 96783.

14 CHAIRPERSON ACZON: Please proceed.

15 DIRECT EXAMINATION

16 THE WITNESS: We have an agreement and
17 we're working with Kamehameha Schools, the landowner,
18 on future uses of the property. And we actually have
19 currently one-acre parcel where they have requested
20 us to look at what we can do.

21 Part of it is reforestation, native
22 reforestation. Part of it is taro work. So that's
23 part of the plan and will be incorporated in whatever
24 reforestation in the future.

25 MR. VITOUSEK: If I may point out, Ms.

1 Chang, Condition 4 of the Proposed Special Permit,
2 requires the Applicant, before the commencement of
3 any quarrying activity of an unquarried portion, to
4 develop a site restoration and revegetation plan.

5 COMMISSIONER CHANG: Thank you very much.

6 CHAIRPERSON ACZON: Commissioners, anybody
7 else, questions?

8 COMMISSIONER CABRAL: I would like to speak
9 in favor. I am familiar with the site. Drag races
10 are down there too, right, a little bit further out
11 and above. I'm all in the right ballpark.

12 It is really -- the only other thing I can
13 think of being realistic that I would use is more
14 industrial warehouses or something in that area.

15 This is not an area -- there is no soil.
16 It's, you know, there's not a lot of growth of any
17 type. I mean it's, you know. I don't know if
18 there's even birds out there. I would be surprised
19 if none, maybe they do find their way out there, but
20 I would be surprised.

21 I do have a question. I don't see it in
22 the papers I printed up, but there was a reference to
23 the seabirds that come in, therefore, you shouldn't
24 do work at night.

25 Was there any evidence that you found those

1 birds on the Big Island in that area at all?

2 MR. VITOUSEK: Well, the birds, the petrels
3 do tend to nest high up. And at certain times of the
4 year they're transiting from upslope to the ocean.
5 So it's pretty typical to not have upward facing --
6 requirements that limit upward facing lights during
7 the shearwater fallout.

8 THE WITNESS: There is more of a problem on
9 Kaua'i and other places, but this is something they
10 can live with, and that's not a problem.

11 COMMISSIONER CABRAL: I manage property
12 very close to that on the ocean side of the airport.
13 I'm going -- I don't have those birds there. Our
14 people would like them probably.

15 MR. VITOUSEK: You hear them flying over.

16 COMMISSIONER CABRAL: I'm fairly familiar
17 with it, go to the dump, into the quarry. What can I
18 say, I cannot if -- I mean quarry, it is a good land
19 use. Like you said, that is required that it be --
20 you cannot take that quarry further down into Puna
21 because then you'd have a cinder pit instead of a
22 rock pit.

23 MR. VITOUSEK: That brings up a very good
24 point. Your quarry activities are necessarily
25 directed towards areas where the resources are. And

1 there's been a lot of quarrying here because the rock
2 is good here. That's why this area has been the
3 focus of quarrying activity.

4 COMMISSIONER CABRAL: Thank you.

5 CHAIRPERSON ACZON: Thank you, Ms. Cabral.
6 Anybody else?

7 Ms. Apuna, does OP wish have anything to
8 add?

9 MS. APUNA: I think that Office of Planning
10 had one recommendation.

11 If this Commission grants Special Permit,
12 that prior to the permit expiration, that the
13 Applicant consider reclassifying the land to Rural or
14 Urban.

15 CHAIRPERSON ACZON: Anybody else?

16 VICE CHAIR SCHEUER: Sorry, you're
17 suggesting that we put a condition on the order to
18 that effect?

19 MS. APUNA: Yeah, for the Applicant to
20 consider reclassification.

21 CHAIRPERSON ACZON: Do you have a problem?

22 MR. VITOUSEK: We have a quarry license.
23 This is -- Kamehameha Schools owns the fee. We don't
24 have the ability to apply for reclassification of
25 land. It's nothing that the Kamehameha Schools has

1 empowered or authorized Glover to do as part of its
2 quarrying license.

3 We could consider it, but there's not a lot
4 that we can do about it, because it's not our land.

5 CHAIRPERSON ACZON: Anything else, Ms.
6 Apuna? More questions for OP?

7 COMMISSIONER HIRANAGA: I'm wondering what
8 the basis of their comment to the Applicant regarding
9 the boundary amendment when they have stated they're
10 not fee owners, their license agreement is to conduct
11 quarry operation. Maybe you could expand or comment.

12 CHAIRPERSON ACZON: Do you affirm that the
13 testimony that you're about to give is the truth?

14 MR. FUNAKOSHI: Yes.

15 RODNEY FUNAKOSHI

16 Was called as a witness by and on behalf of State
17 Office of State Planning, was sworn to tell the
18 truth, was examined and testified as follows:

19 CHAIRPERSON ACZON: Please state your name
20 and address.

21 THE WITNESS: Rodney Funakoshi with Office
22 of Planning, 235 South Beretania Street.

23 CHAIRPERSON ACZON: Please proceed.

24 THE WITNESS: We did participate awhile ago
25 in the county proceedings where the Special Permit

1 was processed and did recommend that prior to
2 expiration of Special Permit -- the reason for that
3 is really the use. It is the Agricultural District.
4 That is the term used. And what we felt was that it
5 is highly unlikely, highly improbable that the area
6 would return to agricultural use. And, therefore,
7 more appropriate classification for the property
8 would be Rural or Urban.

9 And so, yeah, I understand the Applicant
10 does not -- but any applicant can also get owner's
11 permission for reclassification.

12 CHAIRPERSON ACZON: Anything else, Ms.
13 Apuna?

14 MS. APUNA: That's it.

15 CHAIRPERSON ACZON: Commissioners, any
16 questions for Ms. Apuna? Commissioner Wong.

17 VICE CHAIR WONG: Just a question.

18 So, again, the fee is with Kamehameha
19 Schools, correct?

20 So I don't -- if we do this condition, the
21 problem will be wouldn't that change the tax issue?
22 Kamehameha Schools may not want the tax, I mean the
23 increase of taxes, right? Isn't that true? And this
24 may change -- screw these guys up.

25 MS. APUNA: It would change the

1 classification altogether, but a Special Permit
2 usually has an expiration date and you have to keep
3 coming back.

4 VICE CHAIR WONG: I just don't see -- I
5 cannot see myself supporting that condition. I mean,
6 it could be a consideration, but I don't see
7 supporting this as a consideration, because several
8 of issues.

9 One, it's not their land.

10 Second thing, it may screw up Kamehameha
11 Schools because Kamehameha isn't even here at the
12 table to say yes or no. It may increase their
13 property taxes.

14 So I cannot be supporting this, just for
15 your information. Thank you.

16 CHAIRPERSON ACZON: Anybody else?
17 Commissioner Okuda.

18 COMMISSIONER OKUDA: Can I ask a question
19 just regarding the condition?

20 It might be a good idea, but do you think
21 it's possible that requesting the condition now is
22 really just premature? It's something that maybe
23 would be an issue in the future, but not present.

24 THE WITNESS: That's a good point. I
25 wouldn't say it's a strong recommendation. It is

1 what we feel is a more appropriate classification of
2 the land given its proposed uses and likely future
3 uses of that area.

4 But, you know, at the same time, there are
5 numerous other areas that are on the same -- where
6 Special Permits have been used for quarrying in other
7 areas, so that would be the other consideration, that
8 this particular one would be singled out, so to
9 speak.

10 COMMISSIONER OKUDA: I think you raise a
11 good point. But is there really much harm to either
12 the process or the state, or our obligations if we
13 don't have that condition? I mean, is there really a
14 harm to them?

15 THE WITNESS: No.

16 COMMISSIONER OKUDA: That's all. Thank you
17 very much.

18 CHAIRPERSON ACZON: Commissioner Cabral.

19 COMMISSIONER CABRAL: I have to agree. I
20 think evolution will take care of itself. That's
21 quite a few years in the future. By that point in
22 time those people at that time will determine that
23 it's clearly an ideal location for an expanded
24 industrial area. Unless, of course, the airport
25 moves between now and then, but as long as that

1 airport is there and everything is there, when the
2 quarry is finished, it will be an ideal industrial
3 area or more urban area.

4 I would like to go ahead and move for
5 approval, if we can do so at this time.

6 COMMISSIONER ESTES: Second.

7 CHAIRPERSON ACZON: What's your motion?

8 COMMISSIONER CABRAL: I would like to move
9 that the Commission approve the Special Permit,
10 SP14-404 and adopt the recommendations and conditions
11 identified by the Windward Planning Commission; and
12 that our Commission would want to include any
13 additional findings from the Applicant's Ka Pa'a Kai
14 discussion and analysis as Exhibit No. 54.

15 COMMISSIONER ESTES: Second.

16 CHAIRPERSON ACZON: The motion has made by
17 Commissioner Cabral and seconded by Commissioner
18 Estes.

19 Any discussion? Commissioner Scheuer.

20 VICE CHAIR SCHEUER: I want to speak in
21 favor of the motion. I want to thank the attorney
22 and the Applicant. I appreciate that, not to put
23 words into your mouth, but you may have seen when we
24 remanded this back to the Planning Commission that
25 these were small concerns. We heard from the army,

1 national guard at the last moment, but that these
2 were concerns and concerns about Ka Pa'a Kai
3 analysis, but these are very serious.

4 We have these public trust responsibilities
5 and as Commissioners we need to make sure that
6 everything is done correctly. I realize it's taken
7 perhaps longer than anticipated, but we're very
8 appreciative of it. So I can now feel very good
9 about voting in favor of this.

10 Thank you for working with us.

11 HEARINGS OFFICER MIIKE: Any discussion?

12 COMMISSIONER HIRANAGA: Chair, I just
13 wanted to ask for clarity.

14 The OP recommendation regarding
15 reclassification of land in the future is not part of
16 the motion?

17 CHAIRPERSON ACZON: Commissioner Cabral.

18 COMMISSIONER CABRAL: Correct, it is not
19 part of the motion.

20 HEARINGS OFFICER MIIKE: Anybody else?

21 If there is no further discussion, Mr.
22 Orodenker, please poll the Commissioners.

23 EXECUTIVE DIRECTOR: The motion is to
24 approve the Special Permit and adopt the conditions
25 recommended by the Windward Planning Commission.

1 Commissioner Cabral?

2 COMMISSIONER CABRAL: Yea.

3 EXECUTIVE DIRECTOR: Commissioner Estes?

4 COMMISSIONER ESTES: Yes.

5 EXECUTIVE DIRECTOR: Commissioner Mahi is
6 absent. Commissioner Wong?

7 VICE CHAIR WONG: Aye.

8 EXECUTIVE DIRECTOR: Commissioner Scheuer?

9 VICE CHAIR SCHEUER: Aye.

10 EXECUTIVE DIRECTOR: Commissioner Chang?

11 COMMISSIONER CHANG: Yes.

12 EXECUTIVE DIRECTOR: Commissioner Hiranaga?

13 COMMISSIONER HIRANAGA: Aye.

14 EXECUTIVE DIRECTOR: Commissioner Okuda?

15 COMMISSIONER OKUDA: Yes.

16 EXECUTIVE DIRECTOR: Chair Aczon?

17 CHAIRPERSON ACZON: Yes.

18 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

19 The motion passes unanimously.

20 CHAIRPERSON ACZON: Thank you.

21 The next agenda item is LUC Administrative
22 Rules Amendments. Mr. Orodénker.

23 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

24 What we're doing right now is looking at
25 our Administrative Rules. And our Administrative

1 Rules were amended several years ago, and for the
2 most part they're up-to-date.

3 However, there has been some changes in the
4 law, and we have come across some areas where the
5 rules have been shown to be a little bit confusing.
6 And what we're proposing to do at this point in time
7 is to ask the Commission to authorize us to come
8 forward with proposed amendments to the rules that we
9 would later, on Commission's approval, take out for
10 public hearing and get comments from the community,
11 and then submit to the Administration, once again,
12 after the Commission approves those amendments,
13 submit to the Administration for adoption.

14 This is a long process. It can take as
15 long as a year because of public hearing, and time
16 constraints and all the rest of that stuff.

17 At this point what we're really are asking
18 for is authorization to take a look at amending the
19 rules, and in particular, some of the provisions that
20 we're looking at are in, for instance, Section
21 15-15-13(a)(b) to conform with the Supreme Court's
22 Koa Ridge 2 decision.

23 Right now our rules say that adoption of
24 the form of the order will require five affirmative
25 votes, but Koa Ridge makes it clear we need six.

1 Another area that would need to be amended
2 would be 15-15-45(1)(a) to clarify requirements for
3 fees. We've run into some problems with petitioners
4 because they were unclear as to whether or not they
5 were responsible for certain fees.

6 Another area would be 15-15-21 that would
7 basically -- and this is kind of anticipatory based
8 on the TMT case to clarify what the Ka Pa'a Kai
9 requirements are in petition.

10 And then Subchapter 7 to clarify that the
11 Commission -- 15-15-70(j) to clarify that the
12 Commission may schedule a hearing on a matter even if
13 it's not specifically requested.

14 15-15-70(m) to clarify why signatures are
15 required when and whether the entire Commission needs
16 to sign, or there needs to be signature from the
17 Chair.

18 And also to clarify our procedures with
19 regard to EIS, Final EIS. We have been looking at
20 Chapter 343, and I've kind of determined that we've
21 been making it harder on ourselves than we have to.
22 And that since it's not a contested case hearing,
23 that the 30-day requirement can be met by
24 notification from Executive Officer to the Applicant
25 and OEQC.

1 And then 15-15-75 to comport to the new law
2 which allows for direct appeal to the Supreme Court
3 from our decisions.

4 And once, again, 15-15-37(b)(3)(b) with
5 regard to Ka Pa'a Kai issues.

6 And then Subchapter 9, 15-15-82(a) to
7 clarify or to comport our practices. Although our
8 rules originally required all the parties to submit
9 proposed decisions and order, that the practice has
10 become simply for the Petitioner to submit a proposed
11 decision and order and for OP to simply comment on
12 that and make suggested changes, as well as the
13 county.

14 Once again, there's some other changes to
15 other sections to comport with signature
16 requirements.

17 And Subchapter 13, 15-15-7(k)(5) to provide
18 that a 201H proceeding, that we get a certified copy
19 of County Council resolution, because we have had
20 that problem in the past.

21 The rest of them are just minor corrections
22 to the rules regards to drafting and things like
23 that.

24 CHAIRPERSON ACZON: Thank you.

25 EXECUTIVE DIRECTOR: As I stated, we're

1 just really looking for the Commission's approval to
2 continue to make amendments and come back to the
3 Commission at a later date for approval of proposed
4 amendments.

5 CHAIRPERSON ACZON: Thank you.

6 Commissioners, it is my understanding that
7 LUC staff is requesting authorization to proceed on
8 developing proposed amendments to the rules and to
9 present the proposed drafts of the amendments at a
10 future meeting.

11 What is your pleasure?

12 VICE CHAIR WONG: Move.

13 COMMISSIONER CHANG: Second.

14 CHAIRPERSON ACZON: Motion has been made by
15 Commissioner Wong, seconded by Commissioner Chang to
16 authorize LUC staff to proceed on developing proposed
17 amendments to the rules and to present the proposed
18 drafts of the amendments at a future meeting.

19 Any discussions?

20 COMMISSIONER CHANG: So we can submit any
21 comments to you regarding the draft?

22 EXECUTIVE DIRECTOR: Yes. There will be
23 plenty of opportunity, at least two or three more
24 times over the course of the next year, for the
25 Commission to --

1 MR. DERRICKSON: Not just the draft. If
2 you have any suggestions or you want to look at
3 sections, bring it up to us, and we'll check it out.

4 COMMISSIONER CHANG: Will this go through
5 the formal rule-making process? You have to do the
6 SBA as well? Okay.

7 CHAIRPERSON ACZON: Any other questions?
8 Hearing none, those in favor say "aye". Opposed?
9 Motion carries. Thank you.

10 The next agenda is an Executive Session to
11 consult Commissioner's Attorney regarding the
12 Commission's duties, rights, responsibilities and
13 obligations with respect to LUC personnel matters.
14 The Chair will entertain a motion to enter Executive
15 Session.

16 COMMISSIONER OKUDA: Move.

17 COMMISSIONER ESTES: Second.

18 CHAIRPERSON ACZON: Moved and seconded.

19 All in favor say "aye". Opposed.

20 Motion carries. Thank you.

21 (Executive Session from 11:57 a.m. to 12:42
22 p.m.)

23 (The proceedings adjourned at 12:42 p.m.)
24
25

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on August 10, 2016, at 9:00 a.m., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 10th day of August, 2016, in
Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156