

LUC 366

DEPARTMENT OF PLANNING
AND ECONOMIC DEVELOPMENT

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LAND USE COMMISSION

Suite 1795, Pacific Trade Center, 190 S. King Street, Honolulu, Hawaii 96813

August 14, 1978

COMMISSION MEMBERS:

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Shinsei Miyasato
Mitsuo Oura
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Carol Whitesell
Edward Yanai

GORDAN FURUTANI
Executive Officer

Hawaii Planning Commission
25 Aupuni Street
Hilo, Hawaii 96720

Attention: Mr. Sidney Fuke, Planning Director

Gentlemen:

At its meeting on August 8, 1978, the Land Use Commission voted to approve a request by the Inter-Island Engineering, Inc./Hawaiian Host, Inc. (SP77-269) to amend Conditions Nos. 1 and 2 in the Special Permit granted on July 27, 1977 to allow the establishment of a macadamia nut processing plant on 3.1 acres of land situated within the State Land Use Agricultural District at Keeki, South Kona, Hawaii, Tax Map Key 8-3-04: 12, as follows:

Condition No. 1 - One-year extension in which to commence construction of the new structures.

Condition No. 2 - To allow the cracking of in-shell macadamia nuts.

Approval of these amendments is subject to all the original conditions imposed on this Special Permit by the Hawaii Planning Commission. Please be advised that the petitioner's failure to comply with any of the delineated conditions of approval, particularly those relating to time, shall be reason for termination of the Special Permit. The Land Use Commission will not consider any request for time extension which is filed after the stipulated commencement or expiration dates.

A copy of the staff memorandum is herewith enclosed for your information. The Land Use Commission's Decision and Order on SP77-269 will be forwarded to you at a later date.

Sincerely yours,

GORDAN Y. FURUTANI
Executive Officer

Encl.

cc: Inter-Island Engineering
Inc./Hawaiian Host, Inc.

STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM

TO: Land Use Commission August 8, 1978

FROM: Staff

SUBJECT: SP77-269 - Inter-Island Engineering, Inc./Hawaiian
Host, Inc. (Amendment)

The petitioner, Hawaiian Host, Inc., is requesting amendments to Conditions Nos. 1 and 2 of Special Permit 77-269 granted by the State Land Use Commission on July 27, 1977. The Special Permit was to allow the establishment of a macadamia nut processing plant on 3.1 acres of land situated within the State Land Use Agricultural District at Keei, South Kona, Hawaii, Tax Map Key 8-3-04: 12. The subject property is located along the south side of the Napoopoo Road, approximately 1,200 feet mauka of the Kona Farmers Cooperative complex (see attached County Exhibit M-1).

The macadamia nut processing plant was to specifically consist of a new 7,260 square foot (110' X 66') butler building and five (5) 10-foot diameter storage bins. Two existing quonset buildings are also to be part of the proposed operation.

Condition No. 1 of the Special Permit stated: "That construction of the new butler building and the five (5) storage bins commence within one (1) year from the effective date of the Special Permit and be completed within two (2) years thereafter." To this condition, the petitioner is requesting a one (1) year time extension in which to commence construction of the new structures.

Condition No. 2 stated: "That the proposed operation shall be limited to the husking of the macadamia nuts." The petitioner now requests an amendment to this condition to allow the cracking of in-shell macadamia nuts.

In support of the request, the petitioner has in part stated the following:

"Applicant respectfully requests amendment to conditions 1 and 2 of SP 77-269, heretofore granted to Hawaiian Host, Inc. through its consulting engineer, Inter-Island Engineering, Inc.

Generally, condition 1 provides for the completion of the proposed plant within one year from the effective date of SP 77-269. Applicant would like to have an extension of one additional year for the reason that it intends to expand the proposed operation to include processing of in-shell macadamia nuts.

"Accordingly, applicant likewise requests an amendment to the second condition, namely, that it be allowed to expand the proposed operation from merely husking of nuts to the cracking of in-shell macadamia nuts. The reason for the foregoing amendment is that the macadamia nut processing plant owned by Kona Farmers Cooperative is no longer processing in-shell macadamia nuts.

"Accordingly, there is no viable processing plant within the immediate vicinity to serve the farmers in Kealahou, Kona. Therefore, we feel that an expanded operation of our plant to include the total processing of macadamia nuts will serve the interest of farmers in Kona, as well as provide job opportunities to residents in that area and insure the further success of applicant's plant operation."

Pertinent comments from governmental agencies:

1. State Department of Health

The State Health Department noted the following:

- "1. Please identify location of existing cesspools on building plans.
- "2. Preliminary building plans consultation with the area Registered Sanitarian is recommended. Floor plans are required. The reference Public Health Regulation is Chapter 1-A, Food Service and Food Establishment Sanitation Code."

2. Hawaii Fire Department

The Fire Department noted the following:

"Fire hydrants are located within the vicinity of the project and Captain Cook Fire Station is located three miles distant."

Other cooperating agencies, including the Hawaiian Electric Light Company, Inc., Department of Education, Department of Public Works, U.S. Soil Conservation Service, State Department of Agriculture, Department of Water Supply, and Police Department had no objections to the request.

A public hearing on the amendment request was held by the Hawaii Planning Commission on May 17, 1978.

The petitioner's representative, Daniel Lee, clarified that their request for expanding their operation really meant placing machinery in a quonset hut which would take up about 20 feet; and that if this request is approved, they hope to employ approximately 6 or 7 full-time people, thereby providing employment opportunities to the residents in the area.

Under public testimony, Mark Van Pernis, representing the Kona Farmers Cooperative, spoke against the application. Contrary to petitioner's statement, he informed the Commissioners that the Kona Farmers Cooperative is processing macadamia nuts and is able to process approximately 100 percent more nuts than Kona is now able to produce. As to the fact that Hawaiian Host will be adding employees to the working class, Mr. Van Pernis stated that if the Hawaiian Host operation does go into effect, other people are going to have to scale down their employees. He said that since there's a limited amount of nuts now available, it will just be a switch of job locations and not the hiring of any new employees.

Mr. Van Pernis also brought up the concern that the additional machinery would be generating heat to dry the nuts, which implies hot air and smoke. He said this is in an agricultural and historical area, and there should be concern for historical preservation.

Mr. Van Pernis referred to the Planning Commission's March 23, 1977 transcript whereby Mr. Lee stated that their operation would not involve the cracking of the nuts themselves and for that reason any fears that anyone may have that this operation is going to interfere with any of the farmer's livelihood is unfounded. Mr. Van Pernis said now that this application would involve the cracking of nuts, perhaps now is the time to have those fears. He also pointed out that at the March 23rd meeting, Mr. Lee tried to assure everyone that this was a husking operation which was meant to facilitate the general macadamia nut economy of Kona and that they weren't trying to put anybody out of business or compete with anybody to an unfair advantage. Mr. Van Pernis then questioned what is the change of circumstances from the original application and why do they now need the shelling when they were content with the husking, especially when you consider the difference that shelling is going to have. He further questioned that if their original application said that their entire operation could be established in 3 or 4 months, is it necessary to give them another 12 months to add 20 feet of machinery?

Mr. Van Pernis clarified that Sunset is receiving and husking macadamia nuts at its present facility and then takes them up to a processor in Kealahou who is able to do it cheaper.

However, if ever the time comes when there are more macadamia nuts than he can process or chooses not to process, Sunset is always ready to process. They are presently processing nuts every time it's necessary to keep the machines in order, although they are not actively shelling on a day-to-day basis.

Mr. Van Pernis added a final point that he was concerned that the Commission would be setting a dangerous precedent for two reasons - one, as to the method of application and operation, it being a 100 percent different type of operation; and more importantly, the precedent of putting what he feels is an industrial operation in Napo'opo'o.

In response, Mr. Lee pointed out that it was not going to be an industrial complex, they already have plans to definitely eliminate any type of environmental pollution, and that they will be using butane gas and steam for drying the nuts. Mr. Lee said that the Kona Farmers were under a private contract with a private processor in Kona to crack its nuts because it's cheaper than if they were to do it themselves, and he agreed that whatever advantages they can give to the farmer, the farmer benefits. He added that they have a tentative agreement with Pacific Co-op to operate the facility for the benefit of its members, and that this facility would obviously save the cost of transportation, which savings could be passed on to the farmer quite easily in terms of a better return for their product.

Commissioner Paris raised the concern of Mr. Van Pernis that their request was now to expand their operation to include cracking of in-shell nuts. In response, Mr. Lee said at the time they applied for the husking plant they were under the impression that they could take the in-shell nuts and ship it over across the street to the Kona Farmers Co-op to have the nuts cracked. After the Kona Farmers Co-op had rebuilt a new plant and added new machinery, they found it was cheaper to ship the in-shell nuts to another processor. Hawaiian Host now finds that the new processor uses a salt additive system which leaves the kernel with a coating of salt which is quite unacceptable. Mr. Lee added that there seems to be a current dispute among the co-ops regarding the macadamia nut situation and for this reason Hawaiian Host has had to take the initiative and be able to withstand all the current kinds of controversy. He said they were just trying to survive and were willing to put money in to put up the plant. As far as time constraints, Mr. Lee said that they could live within it, but would like to have a little time to live with.

Mr. Van Pernis responded to Mr. Lee's point that the present processing method is unacceptable. He said that there is a contract in which Hawaiian Host is buying all of Kona Farmers Co-op's nuts, and since this processing has been going

on Hawaiian Host has yet to refuse any of the nuts that have been delivered to them. In fact, Hawaiian Host has gone to court to force the Co-op to deliver as many nuts regardless of the processing method. He added that this new processing method is delivering a higher crack-out ratio, such that Hawaiian Host is getting more kernels and the farmers are getting a better return. Mr. Van Pernis informed the Commissioners that the new processing method is in conformity with the requirements of the State of Hawaii.

A letter from Dan Lee to the Planning Commission dated May 16, 1978, was also entered into the record (see attached County Exhibit DD-1).

The Planning Commission moved to continue the public hearing to allow the newly appointed Planning Commissioners adequate time to familiarize themselves with the background and content of the original Special Permit.

The Planning Commission subsequently continued the public hearing on June 15, 1978.

Under public testimony, Dr. Lou Sell, owner of Kona Hawaiian Macadamia Nut Company stated that he was present to correct a couple of misrepresentations. He pointed out that although the Hawaiian Host's representative made some derogatory statements about the quality of their product, stating there was a salt residue present to make it unusable, they have used all these so-called unusable nuts. He presented some nut samples taken that day for the Commissioners to decide whether there is a salt taste present. He pointed out that in the original application, Hawaiian Host said that they definitely were not planning on doing any cracking, and that now they are planning to crack. He said to the best of his knowledge they have never done any husking yet at that location, so it seemed to be kind of a contradiction. Dr. Sell said he was objecting to the application on the grounds that there appears to be enough processing facilities at present in the North and South Kona districts. He added that the Kona Farmers facility, although it is not operating at present, is able to start processing at any time.

Hawaiian Host's representative, Dan Lee, pointed out that the question of the salt coating on the kernels is now in litigation, and he, therefore, could not comment any further on the matter. He pointed out also that the plant itself was originally a cracking and husking plant for some years; however, when they purchased the plant, they allowed it to remain idle for some time.

Mr. Lee stated that in installing the cracker within the plant, they do not plan to alter the physical terrain in any

way, and that obviously OSHA requirements will be imposed as far as noise and other kinds of potential pollution to the environment.

Mr. Lee said it seemed to him that the testimony by the Kona Farmers Co-op is merely saying that they are 700 feet away and they have a plant, and nobody else should have one in the area. He said Hawaiian Host is just trying to see what benefits the farmers can gain and what benefits there might be to the community in general.

Mr. George Schattauer said his personal feeling is that the request should be granted favorably.

Colonel Arthur B. Chun spoke against the request. He urged the Planning Commission that in making their decision, to consider the effect that such an industrial activity will have on the whole valley, particularly the area remaining ostensibly agricultural.

Under public testimony, Mark Van Pernis responded to some of the points raised and pointed out that there seemed to be a continuing problem of inadequate information presented to the Commission. He pointed out that Mr. Lee made reference to the fact that all they are talking about is a 20 by 10-foot piece of machinery to crack nuts; however, he said you're also talking about noise, pollution, heat generated by drying bins, boilers, generators, cracking machinery, a conveyor system, sorting and packaging facilities, and also the trucking operation which is going to go up and down Mamalahoa Highway. He said there's a big difference between a husking operation, which is a small scale operation that many farmers can do on their own farms, and now, the entire gamut of processing.

Mr. Van Pernis said that no one is trying to tell Hawaiian Host that they can't go into the processing business. He pointed out that Mr. Lee responded to his question as to why they now need to crack by saying that the Kona Farmers Co-op couldn't crack, or further process, and that the new processor in town couldn't adequately process. He said he felt that that matter had been thoroughly cleared up because these two particular representations were, in fact, not accurate; that the Co-op can process and Dr. Sell can process. He again questioned why they should be given special privilege when (1) they can show no need for it, (2) they cannot show that it will enhance the area and (3) it establishes a dangerous precedent in a very irreplaceable area.

Mr. Lee said that Hawaiian Host is just trying to do what was and is being done by the Kona Farmers Cooperative. He reiterated that the present site was in existence, was operating as a processing plant for some years prior to the time they took

over. He added that they still feel that they need the farmers, and that whatever benefits the farmers also benefits them, and that they offer the same price to Kona Farmers Cooperative as they do Pacific Co-op.

Also under public testimony, Mr. Tojiro Motoki clarified that Sunset Coffee Co-op is now officially and legally known as the Kona Farmers Co-op, and opposed the granting of the request.

A letter dated May 22, 1978, objecting to the request from Colonel Arthur Chun was also read into the record (see attached County Exhibit V).

For the Commission's information, the hearing transcript for May 17 and June 15, 1978 have been attached (County Exhibits Q and Z).

On July 13, 1978, the Hawaii Planning Commission voted to recommend approval of the Special Permit amendments to the Land Use Commission based on the following findings:

"That approval of the proposed amendment will not be contrary to the objective sought to be accomplished by the State Land Use Law and Regulations. Special Permit 77-269 allowed the establishment of a macadamia nut processing plant within the State Land Use Agricultural District. At the time of the approval it was determined that the proposed processing plant would benefit farmers in the region and that definite benefits would accrue to farmers in terms of proximity to production, and an alternative market. Based on this, it was further determined that the approval of the Special Permit would further the objectives of the Land Use Law and Regulations by encouraging and strengthening existing and future agricultural activities in the area.

"The proposed amendment to the original Special Permit is determined to still be in keeping with the objectives of the Land Use Law and Regulations as well as the findings made in granting the Special Permit. The cracking of macadamia nuts is an integral part of the overall processing of said product. It is directly related to agricultural activities and is, in fact, an essential aspect of agricultural use in that cultivated products are processed prior to their being delivered to the consumer. It should also be pointed out that the proposed use would be allowed if the products were grown on the premises.

"The proposed use is consistent with the guidelines for granting Special Permits. It is also consistent with State and County policies of encouraging and supporting agricultural activities. The granting of the proposed amendment is determined

to be beneficial to the people of the State of Hawai'i relative to adopted agricultural policies.

"The Commission also recommended that the request for a one-year extension of time to commence construction of proposed improvements be granted to allow the completion of plans for the expanded operations. One year is deemed adequate for the petitioner to prepare all necessary plans and other arrangements and to commence construction. The Commission would like to point out that it is standard practice to recommend that plans be submitted for plan approval within one year of the effective date of approval of a Special Permit and that construction commence within one year from the date of receipt of final plan approval. In this particular case, an oversight was made and the one-year period for submission of plans was not included as a condition."

For the Commission's information, the meeting minutes of July 13, 1978, have been attached (County Exhibit GG).

The Planning Commission further recommended that approval of the proposed amendments be subject to all the original conditions of the Special Permit.

For the Commission's information, the remaining conditions imposed on SP77-269 included the following:

- "3. That the rules, regulations, and requirements of the State Department of Health and the County Department of Water Supply shall be complied with.
- "4. That since the land is situated within the Kealahou Bay Archaeological and Historical District, prior to any construction, the petitioner shall receive approval from the State Historic Preservation Officer.
- "5. That the driveway to and parking area for the proposed facility be paved with all-weather, dust-free surface.

The width of the pavement and the number of parking stalls shall be determined at the time of Plan Approval.
- "6. That the area shall be landscaped to soften the industrial aspect of the property.
- "7. That the existing and proposed structures be painted to blend in with the landscape and surroundings of the area.
- "8. That all other applicable rules and regulations shall be complied with."

It was further stated by the Hawaii County Planning Commission that: "Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void."