



LAND USE COMMISSION

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

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GORDAN FURUTANI  
Executive Officer

October 28, 1977

HAWAII PLANNING COMMISSION  
25 Aupuni Street  
Hilo, Hawaii 96720

Attention: Mr. Sidney Fuke, Planning Director

Gentlemen:

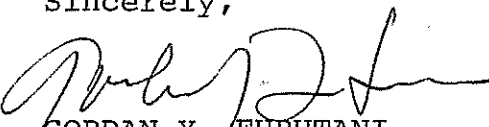
At its meeting on October 25, 1977, the Land Use Commission voted to approve a Special Permit request by Kona Farmers Cooperative, Hawaii (SP77-276) to allow the establishment of its existing coffee processing plant on approximately 4.4 acres of land situated within the State Land Use Agricultural District at Kahauloa, South Kona, Hawaii, Tax Map Key 8-2-8: 46.

Approval of this Special Permit is subject to the conditions imposed by the Hawaii County Planning Commission; and subject further to the following additional conditions:

5. That construction of the new coffee storage building commence within one year from the effective date of approval of the Special Permit.
6. That petitioner be permitted to replace, repair, and/or modernize the existing buildings and, within reason, physically expand the coffee processing facility to a size not to exceed twice the existing operation without obtaining a Special Permit.

A copy of the staff memorandum is enclosed for your information.

Sincerely,

  
GORDAN Y. FURUTANI  
Executive Officer

GYF:jy  
Encl.

cc: Kona Farmers Cooperative  
Department of Taxation, Hawaii  
Tax Maps Recorder, Dept. of Taxation  
Property Technical Office, Dept. of Taxation  
Real Property Tax Assessor, Dept. of Taxation  
Dept. of Planning & Economic Development  
Office of Environmental Quality Control  
Division of Land Management, DLNR

STATE OF HAWAII  
LAND USE COMMISSION

MEMORANDUM

TO: Land Use Commission October 25, 1977  
9:00 a.m.

FROM: Staff

SUBJECT: SP77-276 - Kona Farmers Cooperative

The petitioner, Kona Farmers Cooperative, is requesting a Special Permit to allow the establishment of its existing coffee processing plant on approximately 4.4 acres of land situated within the State Land Use Agricultural District at Kahauloa, South Kona, Hawaii, Tax Map Key 8-2-8: 46. The subject property is located along the north side of Napoopoo Road about one mile southeast (mauka) of Kealakekua Bay (see attached County Exhibit M-2).

The subject coffee processing plant is a non-conforming use in the Agricultural District in that it has been in existence prior to the adoption of the State Land Use Law. Under current procedures a Special Permit must be obtained for any expansion or intensification of a non-conforming use. However, since the existing coffee plant structures are old and in need of either improvement or replacement, it was recommended by the Hawaii County Planning Department that the entire plant area be established under one (1) Special Permit. It was felt that this would allow improvements to the plant without the need for a separate Special Permit for each and every improvement. The requested Special Permit is thus intended to establish the use on the subject property rather than individual improvements.

A new coffee storage building is being proposed as part of the Special Permit request. The petitioner intends to demolish the existing wooden storage building (3,420 square feet) and replace it with a 4,500 square foot (60' x 75') steel building. The new coffee storage building will be a prefabricated steel structure with metal siding.

In addition to processing coffee, the subject property is also used for processing and packing macadamia nuts. A Special Permit to process the nuts was granted to Sunset Coffee Cooperative in November 1968 (SP68-58 Sunset Coffee Cooperative of Kona).

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

- "1. The present factory is an existing facility which has been in existence for many years. However, under present 'Land Use Regulations', the presence of the factory in an agricultural district constitutes a non-conforming use. Accordingly, this Special Permit is now being filed to have this status changed from non-conforming to a conforming use.
- "2. Because the factory already exists, conversion to a conforming use will not unreasonably burden public agencies: there is no requirement for new roads; there is no increase in sewer discharges; water requirements generally remain the same; drainage patterns are not altered; there is no requirement for school improvements; and there is no increase in police and fire protection.
- "3. Had the processed coffee been cultivated on the same premises, establishment of the factory would have been a permitted use.
- "4. The factory offers the farmers an economical, efficient, and centralized location for processing their harvested crops. In this manner, the continued operation of the factory would leave more land open to agriculture in county-zoned agricultural lands, and state land use agricultural districts.
- "5. The Coffee Storage Building is old and needs to be replaced. The replacement structure will have to be built on the same site as the existing. However, the existing building does not satisfy present setback requirements; therefore construction of a replacement building will require a variance.
- "6. As additional information, the macadamia nut processing facilities on this site have been constructed under a Special Permit which was filed earlier, under a separate application."

The General Plan Land Use Pattern Allocation Guide Map designates the subject area as Orchard. The County's zoning designation is (U) Unplanned.

Surrounding land uses include scattered single family dwellings, coffee farms, and other agricultural uses. The proposed Hawaiian Host, Inc., macadamia nut processing plant which had recently been granted a Land Use Commission Special Permit (SP77-269 Inter-Island Engineering, Inc.), will be situated about 400 yards mauka of the subject property along the Napoopoo Road.

The Land Study Bureau's overall master productivity soil rating for agricultural use is Class "E" or Very Poor for the property under consideration.

The Napoopoo Road which fronts the property has a pavement width of 20 feet. All essential utilities including a 6-inch water line are available to the area.

Pertinent comments from governmental agencies:

1. State Department of Health

The State Department of Health made the following comment in reference to the subject request:

"The requirements of Public Health Regulations, Chapter 1-A, Food and Food Service Establishment Sanitation Code are applicable to the coffee processing plant."

2. Department of Water Supply

The Department of Water Supply had no objections to the subject request, it did note, however, that there is a 6-inch waterline along the Napoopoo Road.

3. State Department of Land and Natural Resources, Historic Preservation Office

Since the property under consideration is situated within the Kealakekua Bay Archaeological and Historical District, all proposed improvements must be reviewed by this office. The following are the comments of that office:

"The proposed undertaking will have no effect upon any known historic or archaeological site on or likely to be eligible for inclusion on the Hawaii Register and/or National Register of Historic Places. This office has no reservations for the project to proceed. In the event that any unanticipated sites or remains are encountered, please inform the applicant to contact this office immediately."

All other cooperating agencies, including the Department of Public Works, U. S. Soil Conservation Service, Fire Department, Hawaii Electric Light Company, Inc., Police Department, and State Department of Agriculture had no comments on or objections to the subject request.

At the public hearing held by the Hawaii County Planning Commission on July 28, 1977, three representatives of the petitioner testified in support of the request. No other persons testified with regard to subject permit request. For the Commission's information, the hearing transcript of the July 28, 1977, meeting has been attached (County Exhibit Q).

On August 25, 1977, the Planning Commission voted to recommend approval of the Special Permit to the Land Use Commission based upon the following findings:

- "1. That the proposed use will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The 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 health and welfare of the people.

The basic purpose of the subject request is to legitimize the existing nonconforming use. The present coffee processing operation at the area under consideration has been in existence prior to the adoption of the State Land Use Law and Regulations. However, in order for improvement or expansion to be made to the existing processing plant, a Special Permit must be secured. Since some of the existing structures are quite old, rather than obtaining a Special Permit each time improvements are contemplated, it was suggested by the County of Hawaii Planning Department to establish the entire area under one (1) Special Permit. In doing so, improvements to the plant can be made without applying for a Special Permit for each and every improvement. By granting a Special Permit, we are basically establishing the use on a particular property rather than the individual improvements or structure to go on the property. This coffee processing plant is presently servicing some of the coffee farmers in the Kona area. The processing operation has proved to be a positive benefit and support to agriculture for the Kona area. With the establishment of this facility, definite benefits have accrued to the farmers in terms of proximity to production areas, cost of production, and an alternative market. The processing facility has indeed furthered the objectives of the Land Use Law and Regulations by encouraging and strengthening existing and future agricultural activities in the area. Further, the granting of this particular request would also compliment the Economic goal of the County of Hawaii General Plan which states that 'The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.'

- "2. That the proposed use will not adversely affect the surrounding properties and land uses. The surrounding properties are either vacant or in some form of agricultural use. Although there are some single family dwellings in the immediate vicinity, no objections have been raised by the residents on the present use. In addition, the State Land Use Commission recently allowed a macadamia nut husking plant to be established in close proximity to the subject

area. It is therefore determined that the proposed use at its particular location will complement the surrounding land uses; thus, would not have an adverse impact on the overall agricultural activity for the area.

Further, since the use is one that has already been established on the subject property, it is determined that the granting of this particular request will not substantially alter or change the essential character of the land.

- "3. The proposed use is directly related to agricultural activity. Within the State Land Use Agricultural District and the County's Agricultural zoned district, processing of agricultural products is a permitted use provided that the products are grown on the premise. If the coffee to be processed were solely grown on the subject property, then a Special Permit would not have been required. In this particular case, however, a Special Permit is necessitated since the products will be obtained from other properties in the area.
- "4. That all essential utilities and facilities are available to the area for the requested use. As such, the granting of this request for the purpose of establishing a coffee processing plant at this particular location will not unreasonably burden public agencies to provide additional infrastructures.

"In light of the above stated reasons, the Planning Commission felt that the proposed use will be consistent with the guidelines for granting a Special Permit. A major policy of the State and County is the encouragement and support of agricultural activities throughout the State. The proposed use is directly supportive of farming activities. It is therefore concluded that the granting of this particular request would be beneficial to the people in the State of Hawaii relative to adopted agricultural policies."

The favorable recommendation was subject to the following conditions:

- "1. That prior to construction of any facilities on the subject property, the petitioner or its authorized representative shall submit such plans to the County Planning Department for review and approval.
- ✓ "2. That all existing requirements, such as the Special Management Area Use Permit, shall be complied with.
- ✓ "3. That through the Special Permit procedures, certain County Zoning requirements may be waived. In this case, the petitioner intends to construct a new coffee

storage building with a fifteen (15) foot front yard setback in lieu of the required thirty (30) feet. This setback variance is hereby granted provided that the building is setback at a minimum of 15 feet from the front property line.

- "4. That in the event that unanticipated sites or remains are encountered during the course of grading and/or construction the State Historic Preservation Officer shall be notified since the land is situated within the Kealakekua Archaeological and Historical District."

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

In accordance with Section 9-3, Subsection (2) of the Land Use Commission's Rules and Regulations which in part states that: "The County Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, which time limit, among other conditions shall be a condition of the Special Use Permit", staff recommends that if the Commission is to approve the subject request, an additional condition be imposed as follows:

"That construction of the new coffee storage building commence within one year from the effective date of approval of the Special Permit."

Land Use Commission Staff Comments:

Staff notes that this Special Permit request contain some concerns that may require legal advice.

Initially, staff is unclear as to the intent of this Special Permit. The County states that the Special Permit is to allow the establishment of an existing coffee processing plant. However, under the non-conforming use section of the Land Use Law (Chapter 205-8, HRS), the subject coffee processing plant is allowed. After a discussion with a Hawaii County Planning Department staff member, it is our understanding that the applicant had initially sought to obtain a Special Permit to replace the old coffee storage facility with a new storage facility. Through the ensuing review and evaluation of the applicant's request, the County Planning staff found that much of the existing coffee processing facilities are old and in need of future improvements. Although at this time the applicant was only seeking the construction of a new storage facility to replace the old one, the County Planning Department recommended that the entire area be included under the Special Permit, thereby, eliminating the need for obtaining a Special Permit every time a new improvement or addition is required. More specific information regarding this matter is contained in a portion of finding No. 1 from a letter of September 12, 1977 from Mrs. Jitchaku, Planning Commission Chairman, which states:

"Since some of the existing structures are quite old, rather than obtaining a Special Permit each time improvements are contemplated, it was suggested by the County of Hawaii Planning Department to establish the entire area under one (1) Special Permit. In doing so, improvements to the plant can be made without applying for a Special Permit for each and every improvement. By granting a Special Permit, we are basically establishing the use on a particular property rather than the individual improvements on structures to go on the property."

In issuing Special Permits, the Land Use Commission has followed a policy of specifying the particular use and physical improvements for which each permit is granted. In this instance, a Special Permit is being requested wherein all the particular physical improvements are not specified, except for the coffee storage facility. While staff does not oppose the intent of the Hawaii County Planning Department to consolidate anticipated improvements under one Special Permit, it feels tests (2) and (3) described in Section 5-2 Tests to be Applied are difficult to evaluate without being provided a sense of scale to any proposed use and that the identification of the physical improvements, while not the only means of identifying scale, is a commonly used and effective measure or indication of scale.



Based on this background, staff is requesting legal advice on the following questions:

1. Does establishing or placing the entire parcel under this Special Permit, without an identification or description of future physical plant expansion allow improvements to be made on this parcel without applying for another Special Permit so long as the improvements are related to the Special Use granted?
2. If the response to the above is negative, does this mean that final approval of this Special Permit will only allow the construction of the coffee storage facility and nothing else?
3. Would the handling of the County's desire to eliminate the need for obtaining Special Permits for any future improvements more properly be done through the imposition of a condition?

April 24, 1980

Mr. Gordan Furutani  
Executive Officer  
Land Use Commission  
190 South King Street  
Suite 1795  
Honolulu, Hawaii 96813

Dear Mr. Furutani:

Nullify SMA Use Permit No. 38 and Delete Condition  
Nos. 2, 3 and 5 of Special Permit No. 77-276 (LUC 371)  
Tax Map Key 8-2-08:46

The Planning Commission at its duly held public hearing on April 10, 1980, considered the above requests to nullify Special Management Area (SMA) Use Permit No. 38 and to delete condition nos. 2, 3 and 5 of Special Permit No. 77-276 which allowed the establishment of the existing non-conforming coffee processing plant within the State Land Use Agricultural District at Kahauloa, South Kona, Hawaii.

The Commission voted to approve the above request to nullify SMA Use Permit No. 38 since Kona Farmers Cooperative no longer has plans to construct the new coffee storage building due to economic considerations.

In regards to the request to delete Condition Nos. 3 and 5, since the petitioner does not intend to construct the new coffee storage building, and since Condition Nos. 3 and 5 of SP 77-276 relate to the construction of that building, the Planning Commission also has no objections. We therefore are recommending to the Land Use Commission the approval for the deletion of Condition Nos. 3 and 5.

APR 25 1980

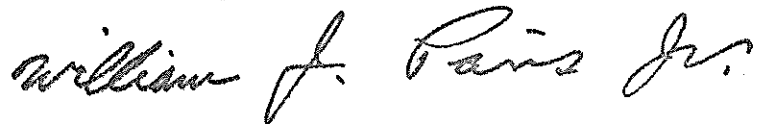
Mr. Gordon Furutani  
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As far as Condition No. 2 is concerned, since the property is situated within the SMA, we feel that this condition should be retained. Since the Special Permit established the entire 4.4-acre property under the Special Permit, any future improvements must comply with existing regulations. As such, should the petitioner intend to construct any other improvements in the future, the requirements of the SMA Rules and Regulations must be complied with. We therefore feel that Condition No. 2 is still appropriate.

Should you have any questions, please feel free to contact the Planning Department at 961-8288.

Enclosed are copies of the Exhibits from the subject docket.

Sincerely,



William J. Paris, Jr.  
Chairman, Planning Commission

NH/lgv

cc: Mr. Jeff Citron  
Building Division, Public Works  
Kona Services Office