

County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JUN 04 2015

Sidney M. Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

SUBJECT: Special Permit No. 538 (Docket No. 83-000001)
Applicant: WDC Properties, LLC
Request: Time Extension to Condition No. 4 (Life of Permit)
Tax Map Key: 6-8-001:043

The Leeward Planning Commission, at its duly held public hearing on May 21, 2015, voted to approve the above-referenced request for an amendment to Special Permit No. 538 for a 10 year extension to the life of permit (Condition No. 4) which allowed the establishment of the existing Waikoloa heliport and its related improvements situated on 9.8+ acres of land within the State Land Use Agricultural District. The property is located at the southeastern corner of the Queen Ka'ahumanu Highway and Waikoloa Road intersection, Waikoloa, South Kohala, Hawai'i.

Approval of this amendment is subject to the following amended conditions:

1. The petitioner, its successors or assigns shall be responsible for complying with all conditions of approval.
2. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the approval of this permit.

JUN 04 2015

3. Final Plan Approval for all uses and structures associated with the heliport, pursuant to Sections 25-2-72 and 25-2-75 of the Hawaii County Code (Zoning Code), shall be secured from the Planning Department. Plans shall identify all existing and proposed structures, helipads, landscaping, fire protection measures, paved parking stalls and paved driveway access associated with the approved use. Plans shall also indicate helicopter ingress and egress routes. Uses of the landing strip shall be limited to heliport operations only.
4. This permit shall be effective until June 30, 2025.
5. Heliport operations at the project site shall be limited to a maximum of 40 landings per day during daylight hours. Emergency landings or emergency helicopter support are excluded from this condition.
6. Routine daily maintenance and engine testing to ensure airworthiness is permitted at the heliport. Regular scheduled maintenance of helicopters at the heliport is prohibited. Flight testing of helicopters, with the exception of flights associated with emergency repairs, is also prohibited at the heliport. Other operational procedures, such as refueling, shall comply with applicable governmental regulations.
7. Safety devices and signage as may be required by the State Department of Transportation shall be installed prior to the commencement of helicopter flights from the approved heliport facility.
8. The petitioner and all users of the landing strip shall be responsible to take reasonable precautions to avoid the creation of hazardous conditions which may affect traffic in the area of the landing strip. Should it be determined that adequate precautionary measures are not being taken, the Planning Director is authorized to temporarily suspend any further use of the landing strip pending further disposition by the Planning Commission which may then nullify the permit.
9. All other rules, regulations, and requirements shall be complied with.
10. An annual monitoring report shall be submitted to the Planning Director on or by June 30th of each year this permit is in effect. The report shall include, but not be limited to, a comprehensive listing of all complaints received by the applicant regarding operations at the heliport and its disposition. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

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Planning Consultant
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11. The applicant shall be responsible for operating the heliport facility in a manner as represented to the Planning Commission, including good faith negotiations with qualified helicopter tour companies, and prescribed under the conditions of approval of this permit. Non-compliance with these representations or conditions of this permit shall cause the Planning Director to schedule a public hearing on the matter before the Planning Commission to determine whether a violation has, in fact, occurred.
12. Should the Planning Director determine that any of the conditions have not been met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the Special Permit.

[Note: Ramseyer version available upon request.]

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.

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Jeffrey Darrow of the Planning Department at 961-8158.

Sincerely,



Brandi K. Beudet, Chairman
Leeward Planning Commission

LWDCpropertiesamendSPP538lpc
Enclosure: PC Findings

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Mr. Gilbert Bailado
WDC Properties LLC

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

WDC PROPERTIES, LLC
SPECIAL PERMIT NO. 538
REQUEST TO AMEND CONDITION NO. 4 (LIFE OF PERMIT)

Special Permit No. 538 was approved by the Planning Commission on October 12, 1983, and subsequently amended on May 22, 1985, May 24, 1990, June 22, 1995, May 5, 2000 and March 18, 2005. The March 18, 2005 amendment to Condition No. 4 allowed an additional 10 years to the life of the permit: "This permit shall be effective until June 30, 2015." The applicant is requesting an amendment to Condition No. 4 to extend the life of Special Permit No. 538 for a period of ten (10) years until June 30, 2025. The property is located at the southeastern corner of the Queen Ka'ahumanu Highway and Waikoloa Road intersection, Waikoloa, South Kohala, Hawai'i, TMK: 6-8-01:043 (portion).

Approval of this request would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The establishment of the Waikoloa Heliport and related improvements within the State Land Use Agricultural District and the County's Agricultural-5 acre zoned district was originally permitted through the Special Permit review process. The Special Permit process provides an avenue to review and analyze proposed projects on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses as well as the General Plan goals and policies. Approval of an additional ten-year life to Special Permit No. 538 would not be in conflict with the agricultural objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses which they are best suited in the interest of public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The project site is comprised of A'a lava, which has been classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau's Detailed Land Classification System and which is not classified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) system. The land upon which the proposed use is sought is not well suited for agricultural uses permitted within the district. The continued operation of a heliport facility within the project site will not displace any agricultural activity nor diminish the agricultural potential of the surrounding area. Therefore, the continued use of the heliport would not be contrary to the objectives of the State Land Use Law for the Agricultural District.

Continued use of the heliport facility for a period of ten years will not adversely affect surrounding properties. The ingress-egress routes to and from the heliport, which have the greatest potential of impacting surrounding lands, have been selected to avoid noise sensitive areas, such as residential and resort areas. Flights over the area makai of Queen Ka'ahumanu Highway from 'Anaeho'omalu to Kawaihae are prohibited, except in the event of an emergency or if required for safety reasons. Existing flight patterns avoid the nearest residential areas of the Waikoloa Village, located approximately four miles east of the facility, and Puakō, located approximately four miles north of the facility, as well as the resort areas along the coast. To date, the Planning Department has not received any complaints from the general public regarding

operations related to the heliport. In September 1997, the heliport operator engaged an acoustical and electronic engineering firm to prepare a Noise Exposure Map for the Waikoloa Heliport. This map demonstrates that there are no noise sensitive uses within the contours affected by the heliport. Lands surrounding the project site are currently vacant, with no imminent proposal for its development into uses which could conflict with the continued use of the heliport. However, it is recognized that surrounding lands are targeted for urban development, which could be severely impacted by the heliport. The amendment to limit the life of Special Permit No. 538 to a period of ten years would provide the Planning Commission with the opportunity to re-assess Special Permit No. 538 to ensure that development of lands within the immediate area will not be adversely affected by the continued use of the heliport. Restrictions regarding the maximum number of flights per day, hours of operation, general maintenance activities and test flights are included as conditions of approval to ensure that the scope of heliport operations as represented to the Planning Commission and the Planning Department remain consistent with the findings of the recommendation. An annual monitoring report will continue to be required to document complaints which may be received by the applicant.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, police and fire protection. Access, water, wastewater disposal facilities and other essential facilities and services are already available to the project site. Continued use of the project site as a heliport will not place additional burdens upon public agencies to provide these services.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. During the 1980's and throughout the 1990's, the helicopter tour industry experienced a gain in popularity. The North Kohala area became one of the major attractions for the tourist and helicopter industries. As the demand for helicopter tours increased, so did the need for heliports. Heliports may be permitted on lands located within the State Land Use Urban District through the issuance of a Use Permit by the Planning Commission. However, the establishment of heliports within Urban Districts usually conflicts directly with other noise sensitive urban uses, such as residential, commercial and resort developments. Agricultural lands provide, for the most part, the large acreage and remote locations required to provide a buffer from the noise generated by such facilities. Therefore, by allowing the establishment of heliports within agricultural lands, the potential for conflicts with urban uses are subsequently minimized.

Continued use of the heliport for a period of ten years will not substantially alter or change the essential character of the land and its present use. The existing heliport facilities have been in operation since 1990 and as an airfield from 1984 through 1990. Extending the life of Special Permit No. 538 will not change the character of the project site or its surrounding area from its current established theme as a transportation facility. Endangered species of flora and fauna are not anticipated within the project site due to its soils being made up of barren A'a lava. For similar reasons, significant archaeological sites are not anticipated to be located within the project site.

The continued use of the heliport is not contrary to the General Plan. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates lands surrounding the project site and on both sides of Queen Ka'ahumanu Highway and Waikoloa Road as an Urban Expansion Area. This designation allows for a mix of high density, medium density, low

density, industrial and/or open designations in areas where new settlement patterns may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. Within areas designated for development as resorts, portions of the resort area may be included in the urban expansion area. Although the applicant states that the mostly vacant lands adjacent to the project site will not be developed within the next ten years, periodic review by the Planning Commission is necessary to ensure that the compatibility of the heliport with any existing or other uses allowed within an Urban Expansion Area are maintained. As urban development is encouraged within the immediate area and traffic along the Queen Ka'ahumanu Highway and Waikoloa Road increases, the potential conflict between these uses and facilities and the heliport will also increase. Therefore, by providing an opportunity for periodic review by the Planning Commission, the continued operation of the heliport for an additional ten-year period is not contrary to the objectives sought to be accomplished by the General Plan.

The continued use of the heliport would be consistent with the following goals, policies and standards of the Land Use and Economic Elements of the General Plan.

Land Use Element

- Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.

Economic Element

- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

Based on the above considerations, the continued use of the Waikoloa Heliport is approved for an additional ten (10) years until June 30, 2025.

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CERTIFIED MAIL

October 18, 1983

Mr. Willis H. Sanburn
Atpac Land Company
130 Merchant Street, Suite 1801
Honolulu, Hawaii 96813

Dear Mr. Sanburn:

Special Permit Application (83-1)
TMK: 6-8-01:Portion of 5

The Planning Commission at its duly held public hearing on October 12, 1983, voted to approve your application, Special Permit No. 538, to allow the establishment of an airplane landing strip and related terminal and parking facilities at Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

The proposed use will not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The purpose of the Land Use Law and Regulations is to protect, preserve, and encourage the development of lands in the State for the public health and welfare of the people of the State of Hawaii. The area under consideration is classified as Agricultural by the State Land Use Commission. The Agricultural District not only includes lands with a high capacity or potential for agricultural uses, but also lands which are surrounded by or contiguous to agricultural and ancillary activities by reason of topography, soils, and other related characteristics. The subject area's dominant soil type is A'a lava and is rated low for potential agricultural activities. Although it is possible that some agricultural activities may be conducted on the subject property, it is determined that approval of the subject request would not be contrary to the objectives of the State Land Use Law and Regulations given the low agricultural potential for the subject area and the above-cited criterion for determining the Agricultural District.

Mr. Willis H. Sanburn

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From a procedural standpoint approval of the subject request would be consistent with the purposes of the Land Use Law and Regulations. As noted in the Supreme Court Kahe Theme Park decision, the procedures established for handling district boundary amendments and Special Permits are significantly different with much greater scrutiny being placed on boundary amendments. In reaching its decision on the Kahe Theme Park, the Court held that the requested use was of such a nature and magnitude that it would in fact constitute a major impact to the area. Based on this the Court determined that the theme park is not an "unusual and reasonable use" and thus the Special Permit was declared invalid.

The Hawaiian Air Special Permit application on the Island of Maui was also held to be invalid by the Second Circuit Court. In its opinion the Court held that the Supreme Court Kahe Theme Park decision was controlling and thus found that the requested use was not "unusual and reasonable" thereby providing the basis for invalidating the permit.

The subject request is, however, very different in its scale and potential impacts. The Kahe Theme Park was proposed to cover 103 acres of land, and attract 1.5 million visitors per year. The Hawaiian Air airport request was to cover 124 acres of land and serve as a major air facility for Hawaii's largest inter-island carrier. By contrast, the subject request is to cover only 9.8+ acres of land and is anticipated to be lightly used.

Given this scale of development, it would be appropriate to utilize the Special Permit procedures since no major off-site nor on-site impacts are anticipated. Given its minimal implications for surrounding land development pressures, it is determined that the proposed use would be an unusual and reasonable use and thus would meet this criteria of the State Land Use Law.

Further, as noted above, the land upon which the proposed use would occur has very low agricultural suitability due to its soil type. Additionally, most of the surrounding lands are similarly poor in agricultural suitability. Although some type of agricultural uses may be developed even on this poor soil base, the winds of the area will be a complicating factor for such production.

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All necessary utilities and services can be provided to the site by the petitioner. In this regard the petitioner will assume total responsibility for the provision of the necessary infrastructure.

The proposed uses will not adversely affect the surrounding properties and their improvements. The area being proposed for the airport facility is surrounded by vacant lands which are owned by the petitioner's parent company. Thus, no adverse impacts to surrounding properties are anticipated.

However, in view of the possible impacts to the Queen Kaahumanu Highway users recommended conditions of approval include several areas to allow for future review of the landing strip use and mitigating measures to reduce the potential for adverse impacts.

Approval of this special permit request is subject to the following conditions:

1) The petitioner or its authorized representative shall be responsible for complying with all conditions of approval.

2) Plans for the airport facility shall be subject to the plan approval process as outlined in the Zoning Code. Plans for Plan Approval shall be submitted within one year from the effective date of the Special Permit. Final Plan Approval shall be obtained prior to the establishment of the use.

3) The plans submitted for plan approval shall meet with the approval of the Federal Aviation Administration, and the State Department of Transportation. No plan approval shall be issued unless there is concurrence from the above agencies.

4) Structures to be built on the subject property shall be limited to the waiting room facility as shown on the plans submitted in conjunction with the special permit application. Sufficient parking shall be provided along the initiation of use of the landing strip.

5) If the subject area is to be conveyed by license, lease or other means the 9.8+ acre site shall be subdivided from the 3,864.759 acre lot identified by TMK: 6-8-01: 05 prior to the conveyance.

6) Sufficient water for the proposed airport shall be made available at the site by the Waikoloa Water Company as part of the subdivision process.

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7) This permit shall be effective for a one-year period starting from the date of commencing operations. The petitioner shall notify the Planning Department of the date of commencement within 30 days of that date. The permit may be extended by the Planning Commission at its discretion.

8) Safety devices and signage as may be required by the State Department of Transportation shall be installed prior to the commencement of flights using the landing strip.

9) The petitioner and all aircraft users of the landing strip shall be responsible to take reasonable precautions to avoid the creation of hazardous conditions which may affect traffic in the area of the landing strip. Should it be determined that adequate precautionary measures are not being taken the Planning Director is authorized to temporarily suspend any further use of the landing strip pending further disposition by the Planning Commission which may then nullify the permit.

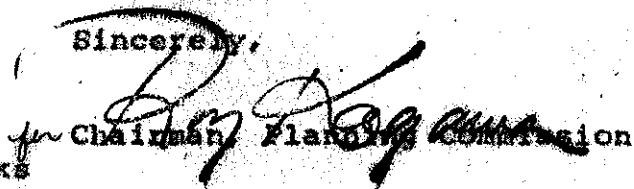
10) All flight activity shall be restricted to daylight hours.

11) All other rules, regulations, and requirements shall be complied with.

Should any of the foregoing conditions not be met the Special Permit shall be automatically void.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,


for Chairman, Planning Commission

cc: Chief Engineer, Public Works
Building Division, Public Works
County Kona Office
Water Supply

bcc: Plan Approval Section