

CERTIFIED MAIL

July 5, 1989

David and Carol Souza
P.O. Box 1999
Kamuela, HI 96743

Dear Mr. and Mrs. Souza:

Special Permit Application (89-4)
TMK: 6-2-05:Portion of 13

The Planning Commission at a duly advertised public hearing on June 27, 1989, considered your request for a Special Permit in accordance with Chapter 205-6, Hawaii Revised Statutes, and Rule 6 of the Planning Commission, to allow a parking area for business vehicles on a 1+-acre area situated within the State Land Use Agricultural District at the northwest corner of Kawaihae Road and Kahinu Place, Waimea Landmark Estates Subdivision, Ouli, South Kohala, Hawaii.

The Commission voted to deny the Special Permit based on the following findings:

Chapter 205-6, Hawaii Revised Statutes (HRS), authorizes the County Planning Commission to issue Special Permits for certain unusual and reasonable uses within agricultural districts other than those for which the district is classified but only when the use would promote the effectiveness and objectives of Chapter 205, HRS. The proposed "business vehicle" parking lot does not meet the guidelines set forth in the Land Use District Regulations which may determine its use as unusual and reasonable. This application was made originally for a construction baseyard with an office. Although the applicants have submitted a revised application, whether the proposed use is a "parking area for business vehicles" or a "construction baseyard," the operation is deemed to be the same thing. Therefore, the request still does not meet the criteria required for approval by the Planning Commission Rules and Regulations.

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The use is contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The intent of these statutory provisions is 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 the public health and welfare of the people of Hawaii. It is recognized that the Agricultural district "may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics." The property may not be best suited for agricultural activity; however, other considerations must be made as to those uses to which the land is best suited. Although the applicants may be supplying topsoil for agricultural uses, they are also hauling these materials for the resort developments. The hauling of such materials to resort developments is not agriculturally related. The applicants state that the equipment is also to be used for transportation purposes for a future cattle operation. The applicants should be aware that should this operation involve pen feeding of livestock, such use may not physically be able to be situated on their lot. The Zoning Code requires a 1,000-foot setback from any major public road for such use, and the site must be approved by the Department of Health and the Planning Director. The lot extends approximately 400 feet from the Kawaihae Road.

In encouraging the development of lands for those uses to which they are best suited, the State Land Use Commission has also designated lands for Urban use. These lands are regulated by the County Zoning Code in order to promote the general welfare of the community. The proposed use is better suited to an Urban area which has been determined to be appropriate for such use.

The desired use would adversely affect surrounding property. The close proximity of dwellings conflicts with the proposed use by the applicants. This application for Special Permit is the outcome of complaints filed by surrounding property owners. Complaints were based on negative visual impact as well as noise, smell, and dust created by the trucking activity. The Police Department reported that four of the six neighbors that were interviewed have been bothered by dust and noise created by the trucks and noise created by the workers. The character of the surrounding subdivision is agricultural/residential in nature. The property is easily

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visible from the Kawaihae Road and may have a negative visual impact compared to the surrounding agricultural/open lands. While the applicants have proposed to plant a landscaping buffer around the subject property to buffer any anticipated visual impacts, the problem of noise would not be mitigated.

The proposed use will unreasonably burden public agencies to provide services. The Police Department objects to granting of the Special Permit on grounds that the roadway is too narrow to accommodate large semi-trailers along with local traffic. The Department of Public Works states that Kahinu Place is not a County standard road for industrial use. Frequent use of the road by heavy trucks may adversely affect the condition of the roadway which is otherwise subject only to residential and agricultural uses.

The proposed use will substantially alter or change the essential character of the land. The surrounding lands are characterized by agriculture, pasture, and residential use. Covering of a large proportion of the property with cinder fill, compacted by heavy equipment and further subject to oil and diesel spillage, has already substantially altered the character of the land and has resulted in an industrial-type appearance. As stated by the Soil and Water Conservation Service, the fuel spillage observed may affect future agricultural use. Intensification of these impacts should not be encouraged.

The request is contrary to the intent of the General Plan. The General Plan LUPAG Map designates the subject property for Intensive Agricultural use. The use proposed is normally permitted only within the County's Industrial zoned district. This denial is upheld by a goal of the Land Use Element of the General Plan to "designate and allocate industrial areas in appropriate proportions and in keeping with the social, cultural, and physical environments of the County." The use is a permitted use in the Industrial zoned district and should comply with the goals and policies for Industrial development. The Land Use Element of the General Plan gives the following standards for industrial development:

- * Industrial development shall be located in areas adequately served by transportation, utilities, and other amenities.
- * Industrial development shall maintain or improve the quality of the present environment.

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The establishment of this use does not comply with these goals and standards of the General Plan.

Based upon the above, it is determined that the subject request is an unreasonable use of land which will not promote the effectiveness and objectives of Chapter 205, HRS.

A denial by the Commission of the desired use may be appealed to the Third Circuit Court and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Should there be further questions on this matter, please feel free to contact the Planning Department at 961-8288.

Sincerely,



Gary Mizuno
Chairman, Planning Commission

xc: State Land Use Commission
Corporation Counsel

bcc: Plan Approval Section