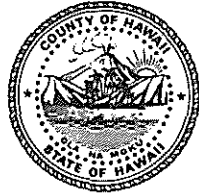


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
Z 416 228 870

July 6, 1995

Mr. T. Akiyama
Doutor Coffee Co. Hawaii, Ltd.
75-5865 Walua Road, #C-619 Kona Pacific
Kailua-Kona, HI 96740

Dear Mr. Akiyama:

Special Permit Application No. 95-1
Applicant: Doutor Coffee Co. Hawaii, Ltd.
Request: Establish a Visitor Center Which Will Promote Kona Coffee and
Contain a Manager's Residence, Coffee Room, Gift Shop and Other Related Uses
Tax Map Key: 7-5-11:Portion of 24

The Planning Commission at its duly held public hearing on June 22, 1995, voted to approve the above-referenced application. In addition, Mr. and Mrs. Jack Burns were allowed to have standing as a party but were denied their contested case request as it was determined that the hearing would not result in a more complete record.

Special Permit No. 904 is hereby issued to allow the establishment of a visitor center containing a manager's residence, a coffee tasting room, gift shop and other project-related uses on approximately 2.06 acres of land situated within the State Land Use Agricultural District. The project site is located about 300 feet south of the Keopu Cemetery and on the west (makai) side of Mamalahoa Highway, Hienaloli 2nd, North Kona, Hawaii.

Approval of this request is based on the following

The granting of this request would promote the effectiveness and 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 to which they are best suited in the interest of the 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 potential for intensive and/or extensive agricultural uses has been clearly demonstrated by the extensive coffee and fruit tree orchards already established on more than 50 percent of the subject property. Soils within the project site and subject property have been classified as "C" or "Fair" for agricultural productivity by the Land Study Bureau's Detailed Land Classification System. The proposed visitor center and its related improvements will occupy

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approximately 2 acres within a 14+-acre parcel. The remaining 14 acres will continue to be cultivated in coffee, a variety of fruits and ornamental plants. A visitor center which promotes the virtues of Kona coffee could enhance agricultural activity on the subject property as well as the Kona coffee industry as a whole. As mentioned within the application, the applicant is a subsidiary of a company which owns and franchises approximately 550 coffee shops and restaurants throughout Japan with an additional 30 coffee shops in Korea and Taiwan. While the company purchases most of its coffee from Brazil, which is located in South America, it has begun roasting Kona coffee for sale through its coffee shops in Japan. The promotional benefits to be gained for the Kona coffee industry through the establishment of a visitor center will far outweigh the loss of vacant agricultural land to accommodate the proposed center and its related improvements. It should be emphasized that the center will house several uses which are permitted within the State Land Use Agricultural District. Therefore, the proposed use would not displace any agricultural activity nor diminish the agricultural potential of the area and would not be contrary to the objectives of the State Land Use Law for the Agricultural district.

The desired use will not adversely affect the surrounding properties. Surrounding uses consist primarily of residential and agricultural uses on lands zoned Unplanned (U) and Agricultural (A-1a, A-3a, A-5a). The proposed visitor center will be centrally located within the subject property and should not create any visual or noise impacts to adjoining properties. The existing landscaped garden and coffee and fruit tree orchards will provide an additional noise and visual buffer to these adjoining properties. It is recommended that the proposed visitor center respect the minimum side yard setbacks of 20 feet as required by the Zoning Code for parcels located within the Agricultural zoned district.

Approval of the Special Permit will not result in a proliferation of "commercial-types" of uses along this portion of the Mamalahoa Highway and the degradation of traffic flow along this substandard highway. When the State Land Use Law was established, sugar, ranching and pineapple were kings. The State Land Use Law, which has not substantially changed since its adoption in 1961, does not fully recognize the evolution of the agriculture industry from one dominated by sugar, ranching and pineapple to one where independent farmers growing a wide variety of products are playing an ever-increasing role in the viability of the agricultural industry on this island and throughout the State. In 1991, the State Legislature amended the State Land Use Law to clarify those uses permitted within the Agricultural District. The Hawaii County Council followed with its amendment to the Zoning Code in 1992. However, there are still many uses which may be an integral part of the agriculture industry, such as the proposed visitor center, but which are not considered a permitted use within the Agricultural District and which must obtain a Special Permit from the Planning Commission. The Planning Director's favorable recommendation is in support of the agriculture industry and its efforts to remain a viable economic force in this County.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water drainage, police and fire protection. Electricity, water, wastewater disposal facilities and other essential services are or will be made available to the project site. Access to the property is provided by the Mamalahoa Highway, a two-lane roadway having a pavement width between 15 and 20 feet within an average 50-foot wide right-of-way. The subject property is located approximately 3.2 miles from the Mamalahoa Highway-Palani Street junction. From this junction, the pavement width of Mamalahoa Highway averages about 20 feet for a distance of approximately 2.3 miles. For the remaining mile or so to the subject property, the condition of the highway deteriorates to an average width of 15 feet.

The Department of Public Works has recommended that pavement and shoulder widening, any necessary transitions and striping, drainage improvements, and relocation of utilities should be performed along the Mamalahoa Highway frontage of the subject property. These roadway improvement requirements are included as conditions of approval. In response to concerns expressed by the Department of Public Works, the applicant has indicated that the transport of visitors to the subject property will be accomplished by vans and mini buses as part of a packaged tour. Tour buses will not be used. While the Mamalahoa Highway is winding and narrow, vans and mini buses should be able to negotiate the 3.2 miles to its Palani Road junction without creating any conflicts with existing traffic using Mamalahoa Highway. Since visitors will arrive at the subject property as part of a packaged tour group, traffic generated by the proposed visitor center will be scheduled throughout the day to avoid a congestion of tour vans or mini buses arriving at the subject property or along the Mamalahoa Highway. Wastewater generated by the proposed visitor center will be disposed of utilizing an individual wastewater disposal system, such as a cesspool or septic system, meeting with the requirements of the Department of Health. All requirements of the Department of Health, Department of Public Works and Fire Department shall be complied with prior to establishment of the proposed use. Other consulted agencies had no objection to the request.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. Agricultural pursuits have changed since the district boundaries were established. Agriculture, once the principle economic force of the State, has taken an unfortunate back seat to tourism. As former staple agricultural industries, such as sugar and pineapple, continue their economic decline throughout the state, farmers have turned towards diversified agriculture in an effort to seek the elusive niche in the market which could once again bring prosperity to the State's agricultural industry. However, even diversified agriculture has witnessed difficult times in recent years due to the depressed economy and growing competition from sources outside of the State. The applicant, through this proposed visitor center, seeks to combine agriculture with tourism in the hopes of capitalizing on the unique strengths each industry have to offer. Similar to ecotourism, which combines tourism with the natural beauty our islands, the proposed visitor center will promote "agrotourism" by introducing to tourists one of our most recognizable local products--Kona coffee.

The use will not substantially alter or change the essential character of the land and the present use. As previously discussed, the proposed visitor center will become an integral part of on-going agricultural activities occurring on the subject property. The visitor center is not intended to operate like a theme park, but will concentrate its activities around the cultivation and processing of Kona coffee. Therefore, the character of the subject property will remain agricultural, similar to the agricultural character of surrounding lands.

The land upon which the proposed use is fairly suitable for the uses permitted within the district. As previously mentioned, soils within the project sites are fairly suitable for many types of agriculture. However, the limited land area required to accommodate the proposed visitor center and the potential benefits to the agricultural industry outweighs the loss of land which could be committed to agriculture.

With the theme of the visitor center limited to the promotion of Kona coffee, the proposed use is consistent with the following goals, policies and standards of the General Plan:

Economic Element

- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o 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.
- o The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.
- o The County shall encourage the development of a visitor industry which is consistent with the social, physical and economic goals of the residents of the County.

Land Use Element

- o Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- o Protect and encourage the intensive utilization of the County's important agricultural lands.

North Kona

- o The County, in order to achieve greater diversity and stability of the economy, shall assist in the further development of agriculture, including aquacultural activities, in North Kona.
- o The County shall protect important agricultural lands within the Kona Coffee Belt.

Based on the above considerations, the establishment of a visitor center for the promotion of Kona coffee within the project site is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated 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.
3. A metes and bounds description of the approximately 2.06-acre project site, in map and written form, shall be filed with the Planning Department prior to, or in conjunction with, the submittal of plans for Final Plan Approval review. The entire project site shall be staked

out by a registered professional land surveyor with written notification confirming completion of the staking submitted to the Planning Director prior to commencing any land alteration activities associated with the proposed visitor center construction.

4. Final Plan Approval for the visitor center shall be secured from the Planning Department. Plans shall identify all existing and proposed structures, landscaping, paved parking stalls and paved access driveway(s) associated with the proposed use. The proposed visitor center building and related structures shall maintain a minimum distance of 20 feet from the boundaries of the subject property.
5. Parking for all functions related to the visitor center shall be maintained within the approximately 2.06-acre project site. A circular driveway shall be provided within the project site to accommodate tour vehicles and reduce the need for backing up.
6. The visitor center's access driveway connection to the Mamalahoa Highway shall be constructed in a manner meeting with the approval of the Department of Public Works, prior to the issuance of a certificate of occupancy for the proposed visitor center.
7. Pavement and shoulder widening, any necessary transitions and striping, drainage improvements and relocation of utilities shall be constructed along the subject property's entire Mamalahoa Highway frontage in a manner meeting with the approval of the Department of Public Works, prior to the issuance of a certificate of occupancy for the proposed visitor center.
8. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease, and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
9. The use of sound amplification devices will not be permitted within the project site.
10. Outdoor lighting fixtures shall be focused downward to illuminate only the project site.
11. Operation of the visitor center shall be limited to the hours from 9 a.m. to 5 p.m., daily.
12. Landscaping and "no trespassing" signs shall be provided along common boundary of the subject property and adjoining properties. Landscaping to be provided shall not block makai views from these adjoining properties.
13. The applicant shall remove, at its expense, all vegetation within that portion of the Mamalahoa Highway right-of-way fronting the subject property for the purpose of improving sight distance, prior to the issuance of a certificate of occupancy for the visitor center.
14. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the General Plan or Zoning Code; c) granting of the time extension would not be contrary to the original reasons for the granting of the

Mr. T. Akiyama
Page 6

permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

15. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

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.

Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,

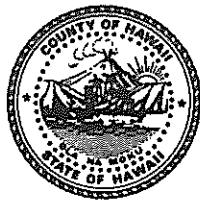
Edward S. Cook, Vice Chair
for Wilton K. Wong, Chairman
Wilton K. Wong, Chairman
Planning Commission

AK:syw
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cc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Plan Approval Section
John L. Sakaguchi, Senior Planner/Wilson Okamoto & Associates

425

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
Z 095 323 581

May 10, 1996

Mr. T. Akiyama
Doutor Coffee Co. Hawaii, Ltd.
75-5865 Walua Road, #C-619 Kona Pacific
Kailua-Kona, HI 96740

Dear Mr. Akiyama:

Special Permit No. 904
Applicant: Doutor Coffee Co. Hawaii, Ltd.
Request: Establish a Visitor Center Which Will Promote Kona Coffee and
Contain a Manager's Residence, Coffee Room, Gift Shop and Other Related Uses
Tax Map Key: 7-5-11:Portion of 24

The Planning Commission at its duly held meeting on May 2, 1996, voted to accept your request to withdraw the above-referenced application.

Should you have any questions regarding the above, please contact Alice Kawaha or Susan Gagarik of the Planning Department at 961-8288.

Sincerely,

Kevin M. Balog, Chairman
Planning Commission

AK:syw
LDouto02.PC

cc: Honorable Stephen K. Yamashiro, Mayor
State Land Use Commission
West Hawaii Office
S. V. "Bud" Quitiquit, Esq.
Mr. Jack R. Burns, et al.
Mr. Walter Kimura
Michael Matsukawa, Esq.

04793

MAY 10 1996

CARLSMITH BALL WICHMAN CASE & ICHIKI

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
121 WAIANUENUE AVENUE
POST OFFICE BOX 686
HILO, HAWAII 96721-0686

TELEPHONE (808) 935-6644
FAX (808) 935-7975

May 9, 1996

96 MAY 10 PM 3 15
PLANNING DEPT.
COUNTY OF HAWAII

Ref#:038966-1
Burns/Forbes

Planning Commission
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Re: Burns/Forbes v. Douter Coffee Company Hawaii, Ltd.
Special Permit No. 904

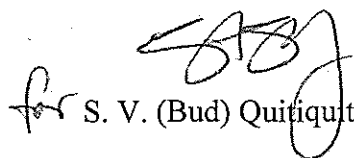
Dear Members of the Planning Commission:

Based upon the April 17, 1996 withdrawal (attached) by Douter Coffee Company Hawaii, Limited of its application under Special Permit No. 904 for TMK (3) 7-5-11:portion of 24, this will request, on behalf of Appellants Jack R. Burns, Dorothy Burns and Roger Forbes, that their request for a contested case hearing and their appeal filed in the above matter be withdrawn, without prejudice. We are requesting that the above referenced contested case request and appeal be withdrawn without prejudice because the applicant Douter Coffee Company Hawaii, Limited may refile its application for the proposed visitor center and related uses at a later date.

Thank you for your attention to this matter. If there are any questions, please feel free to contact my office.

Very truly yours,

CARLSMITH BALL
WICHMAN CASE & ICHIKI


for S. V. (Bud) Quitiquit

SSCL:lny
Enclosure

04669

April 17, 1996

Mr. Kevin Balog, Chairman
And Commissioners
Planning Department
County of Hawaii
25 Aupuni St., Rm. 109
Hilo, Hawaii 96720-4252

Dear Commissioners,

We are hereby requesting that our application of Special Permit No. 904 referring to TMK: 7-5-11:Portion of 24 be withdrawn or cancelled.

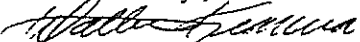
We have bought some adjoining properties to expand our farm and are revising our plans.

We still plan to beautify this area of Kona and help to enhance Kona and the Big Island to attract visitors. We still plan to build our visitor center and do coffee roasting. However the site will be relocated and our operation will be within the permitted uses of the agriculture zoning.

May we thank all of you and the Planning Department for your diligence and patience in performing your difficult responsibilities.

Our sincere appreciation.

Sincerely,



Walter Kimura
Secretary/Director
Doutor Coffee Co. Hawaii Ltd.

cc: Virginia Goldstein, Planning Director
Wilson Okamoto & Associates Inc.

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