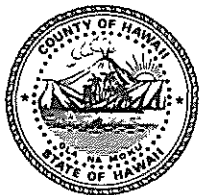


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
Z 416 228 836

August 23, 1995

Ken Melrose, Vice President
Waikoloa Sanitary Sewer Co., Inc.
150 Waikoloa Beach Drive
Kamuela, HI 96743

Dear Mr. Melrose:

Special Permit Application No. 95-8
Applicant: Waikoloa Sanitary Sewer Co., Inc.
Request: Establishment of a Utility Baseyard
Tax Map Key: 6-8-2:Portion of 33

The Planning Commission at its duly held public hearing on August 9, 1995, voted to approve the above-referenced application. Special Permit No. 908 is hereby issued to establish a utility baseyard on approximately 3.00 acres of land situated within the State Land Use Agricultural District. The project site is located approximately 1,250 feet south of Waikoloa Road within portion of the existing Mauka ("Village") quarry site, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

Such use is not contrary to the objectives sought to be accomplished by the land use law and regulations. 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 proposed project will be located within an area whose soils are classified as "E" of "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and unclassified by the Department of Agriculture's ALISH map.

Lands within the agricultural districts are not always suited for agricultural activities and yet may be classified as such. Also, certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts. As such, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

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The subject property is situated within the County's Open (O) zoned district. The proposed utility baseyard operation would be situated on a 3.000 acre portion of a 267.889 acre parcel of land, a portion of which is already in use for quarrying and equipment repair operations. The proposed 3.000 acres of land that will be taken out of the agricultural inventory for this area will not significantly affect the agricultural resource of the area, as the proposed use will be confined to an area which is presently being quarried. No additional surrounding lands are to be developed. In addition, no active agricultural lands will be taken out of production to provide the area necessary to establish this use.

Therefore, based on the above circumstances, approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions. The proposed use would not displace agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use in years.

The desired use will not adversely affect the surrounding properties. The subject property is currently used for an equipment repair facility in conjunction with the quarrying operation approved by Special Permit No. 164 and due to expire in December 1995. The proposed utility baseyard will be using existing facilities and structures. The site is located south and west (makai) of existing development in Waikoloa Village and is suitably remote from surrounding development. The site is separated from Waikoloa Road by a 1,250 foot wide open space buffer and is 1,250 feet from the adjacent, undeveloped multi-family zoned parcel. The facility is naturally screened from Waikoloa Road and adjoining uses by a lava ridge. In addition, because of the proposed site's remote location, access will be from Waikoloa Road via a privately-owned paved road. The property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical, social or other impacts that this baseyard may have on the area.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and police and fire protection. The site is currently served by water, telephone and electrical utilities. Additional traffic will not be generated from the proposed baseyard, and no additional employees are expected to be hired for the new operation. In addition, the existing quarry and accessory equipment repair uses have not generated concerns for additional services to be provided by public agencies. All agency requirements shall be complied with prior to establishment of the proposed use.

The land upon which the proposed use is sought is not unsuitable for the uses permitted within the district. The soils within the project area are not suitable for many types of agriculture uses. The nature of the request is to allow for the permanent establishment of a utility baseyard where existing facilities are available.

The use will not substantially alter or change the essential character of the land and the present use. The applicant intends to utilize the existing facilities for the utility baseyard. Any future structures shall be required to secure Plan Approval by the Planning Director. This condition of approval will help ensure that the structural, visual and public safety concerns will be mitigated to the best extent possible.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The residential growth experienced in Waikoloa Village area

has nearly doubled in the last six years, resulting in a twofold increase in the customer base of Waikoloa's private utility companies. However, commercial and/or light industrial development has not occurred at the same pace within the Village area. While the Utility Companies facilities are expanding, through necessity, to keep up with their customer base, there are no existing appropriately zoned lands on which to operate the baseyard. To meet this demand, the applicant is seeking to establish a common utility baseyard for the three utility companies on 3.000 acres of land. No existing or proposed areas for agricultural activities will be curtailed or diminished as a result of the establishment of this activity on this property. As such, other undeveloped areas are still available for agricultural development and the removal of 3.000 acres of land from the agricultural inventory will not have a detrimental impact on the agricultural resources of the area or the County of Hawaii. The subject request is not contrary to the General Plan LUPAG map, which designates the property for Industrial uses. The request would also support the following goals and policies and standards of the General Plan.

Economic Element

- * 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.

Land Use Element

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- * The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- * Industrial development shall be located in areas adequately served by transportation, utilities and other amenities. Redevelopment or newly developing areas shall be developed in concert with programmed public and privately funded infrastructure to meet the expected needs.
- * Industrial activities may be located close to raw materials or key resources.

Public Utilities Element

- * Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.

Based on the above considerations, the proposed utility baseyard 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, successors or assigns 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 or agents under this Special Permit or relating to or connected with the granting of this Special Permit.
3. A metes and bounds description of the 3.000 acre area for the Utility Baseyard in written and map form shall be submitted to the Planning Department, and the property sites staked within one (1) year from the effective date of this Special Permit.
4. Final Plan Approval for the Utility Baseyard use shall be secured from the Planning Department within two (2) years from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed Utility Baseyard operation, including landscaping where appropriate. All future related uses and structures shall be required to secure Final Plan Approval from the Planning Director.
5. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walks be encountered, work in the immediate area shall cease, and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.
6. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with, and a detailed listing of public complaints or problems and their disposition. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action or remedial effort, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
7. 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.

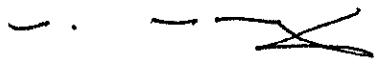
Ken Melrose, Vice President
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- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
8. 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,



Wilton K. Wong, Chairman
Planning Commission

AK:syw
LWaiSa.PC

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