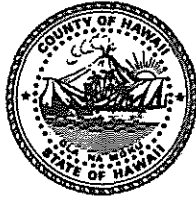


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL
Z 095 323 442

August 8, 1996

Tim Lui-Kwan, Esq.
Carlsmith Ball Wichman Case & Ichiki
P.O. Box 656
Honolulu, HI 96809

Dear Mr. Lui-Kwan:

Special Permit Application (SPP 96-12)
Applicant: Enserch Development Corporation
Request: To Construct and Operate a Cogeneration Power
Plant Facility and Related Uses
Tax Map Key: 4-5-2:Portion of 21

The Planning Commission at its duly held public hearing on July 25, 1996, voted to approve the above-referenced application. Special Permit No. 939 is hereby issued to allow the construction and operation of a cogeneration power plant facility and related uses and improvements on approximately 6.6 acres of land situated within the State Land Use Agricultural District. The property is located west of and immediately adjacent to the former Hamakua Sugar Company Haina Mill Complex at Nienie, Hamakua, 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 for those uses to which they are best suited in the interest of the public 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 subject property, although classified as Agricultural by the State Land Use Commission and Prime Agricultural Lands by the ALISH Map, has a soil rating of "C" or "Fair." It is also located in an area with soils classified as the Paahau series, which are soils that are generally used for sugarcane. The subject property, owned by the Hamakua Sugar Company, Inc., which filed for bankruptcy, is the location of the old Haina Mill operations. The Mill ceased operations with their last harvest in 1992, and since then, the properties have been vacant and not actively used for agricultural purposes. A portion of the proposed power plant will be located on a portion of the Industrial (MG-1a) zoned lands.

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The applicant decided to also use lands within the State Land Use Agricultural district, which are immediately adjacent to the industrial zoned area. The main reason for that decision was that the distance would provide a further buffer between the existing residents in the area and, therefore, minimize any impacts from the power plant operations. The proposed site location was previously used by the Mill as an area for weighing and unloading of sugar-hauling trucks and as a storage and wash down area. As such, the area has already been cleared, and significant lands will not be taken from active agricultural use. Therefore, the request 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. When the Haina Mill was in operation, immediate surrounding uses mainly included industrial/agricultural activities and single family residential uses. Since the Mill ceased operations in 1994, the growing and processing of sugar activities ceased. Within approximately 900 feet from the proposed property boundary of the power plant is the Haina Camp. This residential area is separated by a bluff approximately 40-50 feet high. This serves as a major separation and buffer between the industrial activities proposed for the site. Also, by establishing a majority of the development on the agricultural-zoned area, which is further west of the Haina Camp, the additional distance provides a further buffer the residents from the activities. Project emissions arising from gas turbines, black start generator, emergency fire pump, cooling tower and fuel storage tanks would meet with the required federal and state regulations. Initially, vented emissions will be released, with future thermal hosts being hooked into receiving the waste steam. In addition, to minimize noise emissions, the combustion turbine generator will be enclosed, with the installation of inlet air and exhaust gas silencers. The applicant shall also comply with applicable county, state and federal requirements for safe operations.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection. Access to the project area is from either the Standard Oil Road or the Haina Mill Road. The Standard Oil Road is a private roadway easement owned by Hamakua Sugar Mill, Inc. This road meanders through the project area and will be used by the applicant for fuel deliveries, construction material and equipment and other heavy traffic. This easement is approximately 50-foot wide and paved to varying widths between 25-30 feet wide. The Haina Mill Road is owned by the County of Hawaii for approximately 1,400 feet. The right-of-way varies between approximately 30-50 feet wide. The remainder of the roadway and easements are in private ownership. The County is working with the applicant to secure ownership of the entire roadway. A condition will be included to limit the Haina Mill Road to employees, visitors or office-related truck deliveries. Potable water is available through an existing 6-inch waterline from the Haina Camp. Water for the power plant will be made available either through a well or the Hamakua Ditch System. Finally, the applicant shall submit a Solid Waste Management Plan for review and approval by the Department of Public Works. Other agencies reviewing the request had no objections to the proposed development.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. When the Haina Mill Operations closed and entered bankruptcy, more than 800 people had lost their jobs. With the closing of this mill and, more recently, the Kau Sugar Mill, there has been a greater displacement in the number of sugar workers. These lands previously used for sugar cane production and processing now sit idle. With sugar no longer being a viable industry for employment, alternative economic and land use activities needs to be looked into. The establishment of a power plant in this area utilizing the old mill

site would help to provide replacement work for the sugar workers. Allowing for the proposed development would also help to provide additional power to HELCO for residents. In the immediate vicinity, the cogeneration power plant would help to promote agricultural/industrial related enterprises that will generate jobs for residents in the area. Although a power plant would be an established use within the Industrial-zoned district, the applicant proposes to establish the facility on a portion of the agricultural-designated lands. This area is immediately adjacent to the existing industrial-zoned lands and was used by Hamakua Sugar Company as part of the Haina Mill operations. The Special Permit in the Agricultural districts is the appropriate vehicle for establishing the proposed uses in needed areas.

The use will not substantially alter or change the essential character of the land and the present use. The subject property is presently sitting idle. The land has been cleared as the area was previously used as part of the Haina Mill operations for weighing and unloading of sugar hauling trucks and as a storage and wash-down area. Since the mill operations also had a power plant, the essential character of the land and proposed uses will be similar to the industrial nature of the Haina Mill operations.

The lands upon which the proposed use is sought is not unsuitable for the uses permitted in the district; however, the proposed uses will not interfere with permitted uses. The property was previously used for the Haina Mill operations and is presently vacant. Therefore, no agricultural activity will be diminished. Although the zoning for the property is Agricultural-40 acres (A-40a) and General Industrial-1 acre (MG-1a), the General Plan designation for the area is Industrial, which would allow for agricultural/industrial-type and other uses to be established through the Special Permit process. A portion of the subject parcel is zoned RS-15 with single-family residential uses (Haina Camp). These parcels, located southeast of the proposed project area, are separated by a 40-50 foot high bluff.

The proposed use is consistent with the following goals, policies and standards of the General Plan. The subject parcel falls within an area designated as Industrial on the General Plan LUPAG Map, and the zoning for the property is Agricultural (A-40a), which would allow for agricultural/industrial uses and other uses through the Special Permit process. The proposed request would complement and be consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- * Designate and allocate land uses in appropriate proportions 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.
- * Promote and encourage the rehabilitation of industrial areas which are served by basic community facilities and utilities.

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.
- * The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

Electricity, water, wastewater disposal facilities and other essential services are or will be made available for the proposed power plant facility and related improvements. The applicant will be generating electricity and be able to provide other hosts with thermal energy for manufacturing and processing facilities in the area. Potable water is available through a 6-inch waterline from the Haina Camp. Water for the power plant will be made available through a well drilled onsite or the Hamakua Ditch System. As water is required for the operations of the power plant and for safety measures, a condition will be included that the effective date of the permit shall be when a proven source of water is available for the power plant operations. The applicant would be required to comply with all other applicable agency requirements.

Based on the above considerations, the request to establish a cogeneration power plant related improvements and uses on a portion of the subject property would be an unusual and reasonable use of land within the State Land Use District, which would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

Approval of this request is subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. The applicant, its 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 and 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 granting of this permit.
3. The applicant shall submit an anticipated domestic water demand, as recommended by a registered engineer, to the Department of Water Supply.
4. Construction of the proposed cogeneration power plant shall be completed within three (3) years from the effective date of the permit. Prior to the start of construction, Final Plan Approval shall be secured from the Planning Director. Plans shall identify existing and proposed structures, fire protection measures, driveways and paved parking stalls (chipseal, asphalt or asphalt-concrete), appropriate signage and landscaping associated with the proposed uses.
5. A Solid Waste Management Plan shall be submitted for review and approval by the Department of Public Works.

6. The fuel delivery to the power plant shall be limited through the "Standard Oil Road."
7. The applicant shall comply with applicable Department of Health regulations for noise and emission control.
8. The applicant shall comply with all applicable laws, rules, regulations and requirements of affected agencies.
9. The applicant shall also contribute to the maintenance of the private roads providing access to the project area, as agreed upon with Hamakua Sugar Company, Inc. Such agreement, in the form of restrictive covenants in the deed, shall be submitted for review and approval by the Planning Director prior to securing Final Subdivision Approval. A copy, likewise, as executed and recorded at the Bureau of Conveyances, shall be submitted to the Planning Director prior to the opening of the power plant.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease, and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. An annual progress report shall be submitted on the anniversary date of the permit, in writing, to the Planning Director.
12. An initial extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:
 - A) 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 the Zoning Code.
 - C) Granting of the 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).

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

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

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

AK:syw

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cc: Honorable Stephen K. Yamashiro, Mayor
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Department of Health
Enserch Development Corp.
Mr. William L. Moore
Ms. Joan Castberg
Ms. Jojo Tanimoto
Benjamin Kudo, Esq.
Ms. Beryl Hinau