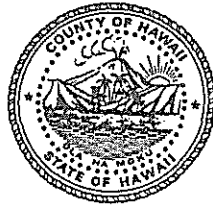


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

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AUG 19 2003

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Dear Ms. Broder, Counsels and Ms. Roy:

Amended Special Permit Application (SPP 02-010)
Applicant: Doutor Coffee Co. Hawaii, Inc.
Request: To Allow Public Tour of the Existing Coffee Farm,
Retail Sales of Non-Agricultural Products and Related Parking Area
Tax Map Key: 7-5-011:Portion of 024

The Planning Commission at its duly held public hearing on August 1, 2003, voted to approve the above-referenced application and adopt the enclosed Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation, with amendments.

The applicant requested a special permit to allow public tour of the existing coffee farm, proposed retail sales of non-agricultural products, and related parking area on approximately 12 acres of a 28.47-acre parcel situated in the State Land Use Agricultural District. The property is located on the west (makai) side of Mamalahoa Highway, approximately 300 feet south of the Keopu Cemetery, Hienaloli 2nd, North Kona, Hawaii.

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The amendments which were made at the hearing are as follows:

Condition 2 – Last sentence amended to read, “. All water system improvements shall be provided by the Applicant at no cost to the County within six months of the date of this permit.”

Condition 5(e) amended to read, “The site shall not be used for group functions (such as commercial weddings, parties, craft fairs, etc.) that have no direct bearing to the agricultural activity on the subject site. With that understanding the coffee picking contest and gathering (Kona Coffee Cultural Festival) held at the site the past few years would be deemed appropriate.”

Condition 5(f) amended to read, “Use of amplification devices for speech shall be prohibited throughout the subject property, with the exception of music.”

Conclusions of Law

No. 1 amended to read: “In considering a special permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits require that the Planning Commission address and consider the following guidelines:”

No. 2 amended to read: “In order to approve the application, the Planning Commission must find that the proposed use:”

Should you have questions regarding this matter, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

ldoutorlpc

Enclosure

cc/enc: Planning Department - Kona

01807

PLANNING COMMISSION OF THE COUNTY OF HAWAII

STATE OF HAWAII

In Re Application of DOUTOR COFFEE
CO. HAWAII, INC. for a special use
permit on a parcel situated at Hienaloli
2nd, North Kona, Hawaii, TMK: 7-5-
11:Portion of 24.

SPP 02-010

FINDINGS OF FACT; CONCLUSIONS
OF LAW; AND DECISION AND ORDER

**FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND DECISION AND ORDER**

This case came on for hearing before Sherry Broder, Hearing Officer appointed by the Planning Commission of the County of Hawaii, on March 17 and 18, 2003. Appearing at said hearing were Ben Tsukuzaki, attorney for Applicant Doutor Coffee Co. Hawaii, Inc., Jack Kelly, representative of Intervenor Kulana Huli Honua, Dennis Krueger, attorney for Intervenor Dean Yokoyama, and Lester Ishado, attorney for Planning Director Christopher J. Yuen. No other parties appeared. Also present at the hearing were Ann Goody and Arlene Wakefield, non-parties.

The Hearings Officer has reviewed the record of this case, and has considered the testimony that parties presented at the hearing, along with all written evidence admitted at the hearing, and being duly informed of all the premises thereof, makes the following findings of fact and conclusions of law:

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To the extent that any of the Conclusions of Law constitute Findings of Fact, or the Findings of Fact constitute Conclusions of Law, they should be considered and construed as such.

FINDINGS OF FACTS

1. DOUTOR COFFEE CO. HAWAII, INC. ("Doutor Coffee") is applying for a Special Permit to allow for the public tours of the Doutor Coffee farm on Tax Map Key No. (3) 7-5-011-024 ("subject property") for up to 80 tourists per day, and for the retail sale of non-agricultural products on the same property.

2. Doutor Coffee's parent corporation is a publicly traded corporation named Doutor Coffee Co., Ltd.

3. Doutor Coffee's Special Permit application is for an area of approximately 12 acres out of the total acreage of 28.47 acres for Tax Map Key No. (3) 7-5-011-024.

4. The 12 acre area for which Doutor Coffee seeks the Special permit is not defined by any metes and bounds description, nor is it an area that has been subdivided from the remainder of the 28.47 acres.

5. The subject parcel is a 28.472 acre parcel owned by Applicant Doutor Coffee Co. Hawai'i, Inc., a Hawai'i corporation, and is located in the ahupua'a of Hienaloli on the makai (west) side of Mamalahoa Highway, approximately 3.2 miles south of Palani Junction and 300 feet south of the Keopu Cemetery, Hienaloli 2nd, North Kona, Hawai'i, TMK: 7-5-11-24 (por).

6. The property is long and narrow with elevations ranging between 1,000 feet and 1,475 feet and a frontage along the Mamalahoa Highway of 300 feet. The subject

property is one of several parcels in the immediate vicinity that is currently being cultivated as a coffee farm by the Applicant, consisting of a total of approximately 160 acres with approximately 90,000 coffee trees. The 28.472 acre property accommodates approximately 4,500 coffee trees on six to seven acres of land that produced approximately 55,000 pounds of coffee cherry in 2002. According to the Applicant, an additional 13 acres remain available for future coffee plantings. As part of its proposed tour operations, visitors may, for a fee, plant a fruit or coffee tree.

7. The subject parcel is located in the State Land Use Agricultural District, zoned Agricultural 5 acre (A-5a), and designated as Orchard on the General Plan LUPAG map.

8. On February 4, 2002, Applicant submitted an application for a Special Permit application to allow for the retail sales of non-agricultural products within an area not to exceed 1,000 square feet under roof on an approximately 1.00 acre portion of the subject property.

9. Applicant amended its original Special Permit application to allow for public "structured and un-structured" tours of the existing coffee farm, the proposed retail sales of non-agricultural products such as t-shirts, postcards, mugs, macadamia nuts, cookies, candies etc. and a related parking area on a total of approximately 12 acres of land within the larger 28.472 acre subject parcel. Coffee retail sales are being conducted within the existing gazebos that accommodate visitors, typically guests from Japan.

10. Visitors arrive at the subject property via passenger vans and tour buses. The existing pavilions on the subject property are approximately 1,000 feet below

Mamalaho Highway, and need to be accessed through electronically controlled gates. The public cannot access these pavilions without seeking permission from Doutor Coffee to enter the subject property through the electronic gates.

11. Visitors are invited to explore the landscaped and cultivated property, enjoy a barbeque-style picnic, purchase coffee products, and plant a coffee tree, which will be cultivated and harvested by the Applicant.

12. Doutor Coffee has no roadside stand from which it sells agricultural products grown on the premises.

13. As represented by the Applicant in its application, the proposed tour operation and retail activity will follow the following guidelines:

- a. On "assigned days and times", the Applicant receives guests (typically from Japan) at the project site, usually for a fee. Arrivals are usually in the mid-mornings with visits for periods of 2 to 3 hours and departure to local hotels right after lunch.
- b. Business hours would be limited to the hours between 9:00 am and 4:00 pm, daily. Noise levels from any source on the subject property shall not exceed 70 decibels at its property lines.
- c. Busy days at the facility saw at least 50 guests who arrived at the site by at least 2 vans and 10 cars. The Applicant wishes to limit guest arrivals to no more than 80 per day.
- d. The retail of non-agricultural items would occur within two existing gazebos, with the possibility of future expansion, but not to exceed a gross floor area of 1,000 square feet.

- e. Aside from maintenance purpose, the existing water fountain feature may be turned on only during business hours and only when guests/visitors are present.
- f. Food service strictly for guests/visitors will be limited to a "family-style" picnic except on Sundays when such service will not be made available.
- g. Special events directly associated with products grown on the subject property or the coffee industry may be held on the premises, provided that no admission fees are assessed. Other types of functions, such as weddings, farmer's market, craft fairs, etc. will not be permitted.
- h. Large tour buses will be discouraged from taking visitors to the subject property. If an event requires the use of such large buses, the Applicant will improve that portion of the Mamalahoa Highway fronting the subject property to accommodate a drop-off area that will not interfere with the normal flow of traffic or access to adjoining properties. Buses using this drop-off area will be required to turn off the engines.
- i. Two existing gazebos that would accommodate the retail sales of non-agricultural items and an existing 20-stall paved parking area are situated within the 12-acre project site.

14. During the proceedings before the Hearing Officer, Doutor represented that no weddings had been held on the property and none were intended.

15. The entire 28.472 acre property is currently improved with the following structures, facilities and improvements:

- a. Two gazebos that serve as an office and retail outlet;
- b. Picnic/barbeque area with kitchen;
- c. Restroom/storage building;
- d. Tractor/storage shed;
- e. Open pavilion and restroom with a reflecting pool and water feature;
- f. 20-stall paved parking area with 18-foot wide access driveway;
- g. Extensive landscaping including fruit trees, coffee trees and lawn Areas;
- h. Unimproved parking lot with capacity to hold 30 vehicles.

16. Intervenor Dean Yokoyama lives approximately 40 feet north of the mauka parking lot for the subject property, immediately adjacent to Mamalahoa Highway. Large tour buses transporting visitors to Doutor Coffee have blocked his driveway access. Intervenor Yokoyama can see and hear visitors and activities on the subject property.

17. Doutor Coffee does not certify the coffee that it sells from the pavilions by the State Department of Agriculture.

18. January 26, 27, 31, and February 1, 2003, Doutor Coffee had tour visitors at the subject property that numbered approximately 500 each day. Tour visitors arrived in large tour buses on a continual basis over a 4½ hour period each day. Buses began arriving at approximately 10:00 a.m., with the last buses arriving at

approximately 3:00 p.m. The County of Hawaii cited Doutor Coffee for a violation of the Hawaii County Code as a result of this activity. The County's Notice of Violation and Order was issued to the Applicant on February 11, 2003, ordering the Applicant to cease and desist any public tour operation by March 7, 2003.

19. Large tour buses cannot be accommodated in either the improved or unimproved parking on the subject property.

20. When large tour buses arrive at Doutor Coffee, they pull off of Mamalahoa Highway in a southerly direction near a grassy area off the highway. The area where the buses pull over has become mostly dirt. Pots are moved back so that there is more room for the buses to get as far off Mamalahoa Highway as possible. After the passengers disembark, the large tour buses usually drive down (south) Mamalahoa Highway to a cemetery parking lot where they turn around and head north back to the Doutor Coffee property. The large tour buses usually park their buses with the engines running and wait diagonally across the street from Doutor Coffee in front of the Hualalai Farms mailboxes until the visitors finish their tour. When the visitors come back to the same location at which they originally disembarked, the large tour buses then, still facing in a northerly direction, cross the southbound lane of traffic, go across the highway and pull back to the same site where the visitors originally disembarked. Except now the buses face in a northerly direction on the makai (westerly) shoulder of the highway and the visitors enter the bus from the mauka side, or the highway side, of the bus. Once filled with visitors, the large tour buses then cross the southerly lane of traffic to head back in a northerly direction away from Doutor Coffee.

21. Soils within the subject property situated closer to the Mamalahoa Highway consists of Honuauulu Extremely Stony Silty clay loam (HVD) and transitions to Kainaliu extremely stony silty clay loam (KEC) as you go further makai from the highway. HVD soils have 12 to 20 percent slope and stones cover from 3 to 15 percent of the ground. Permeability is rapid, runoff is slow, and the erosion hazard is slight. This soil is mostly used for coffee and pasture. KEC soils also have 12 to 20 percent slope, permeability is rapid, runoff is slow, and the erosion hazard is slight. These soils are also used for coffee, macadamia nuts, and pasture. The property is designated as Unique Agricultural Lands by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Maps. Lands within the subject property are classified by the Land Study Bureau's detailed classification system as "C" or "Fair".

22. Professional floral and faunal surveys of the subject property were not conducted by the Applicant. However, because of the improved nature of the land and its cultivation in coffee and fruit trees, the Applicant does not anticipate that endangered flora or fauna will be significantly impacted by the proposed tour operation and retail sales activity.

23. The subject parcel is not adjacent and/or proximate to the shoreline. As such, fishing and coastal access is not an issue. Radiocarbon results suggest that the initial agricultural use of the area began in the early 1400's with the formation of Kua'iwi followed by the construction of terraces within a few decades and continued in use until at least the early to mid 1800's. Since then, the site has been used agriculturally for cattle grazing in the more distant past. Since the Applicant acquired the parcel in 1989,

it has been transformed into a coffee farm with other related improvements. Almost all of the existing vegetation on the parcel now consists of introduced plant species. There was no evidence introduced to establish that the site would be used for the gathering by Native Hawaiians today and/or in the recent past.

24. The majority of the subject property, including the project site, is located within Zone X, an area determined to be outside the 500-year flood plain. There is a small portion of the parcel along the northern edge of the property that is in Zone AE, or a "flood hazard area inundated by the 100 year flood."

25. The subject property, including the project site, and lands in the immediate vicinity are predominantly zoned A-5a. Relatively small areas located across the subject property on the mauka side of the subject property are zoned A-1a and FA-1a.

26. Access to the project site is provided by an existing 18-foot wide driveway located off of the Mamalahoa Highway, which has a right-of-way width varying between 20 and 50 feet and pavement widths varying between 15 and 20 feet. The Applicant has improved the pavement width of that portion of the highway fronting the subject property to 20 feet. Along this particular section of the Mamalahoa Highway, the posted speed limit is 30 miles per hour with a 25 miles per hour advisory speed limit sign fronting the subject property.

27. A traffic impact analysis report dated March 6, 2002 was prepared for the requested use by M&E Pacific, Inc. Traffic counts were taken during non-peak traffic hours to coincide with the project's visitor hours. Counts were taken between 9:00 am to 11:00 am and between 12:00 pm to 2:00 pm. The analysis assumed a visitor limit of 50 guests per day as specified by the Applicant. In summary, the analysis found that

"The addition of non-agricultural products to the retail inventory is not expected to increase visitor traffic and that *"The small number of trips forecast for the project site with the 'best case scenario' will not have an adverse traffic impact on the local roadway system. Traffic movements at the visitor access to the project site will continue to operate at level of service A on its critical movements. Mamalahoa Highway fronting the project site will continue to operate at level of service B. In actuality, acceptance of the Special Use Permit will not in itself attract more visitors to the project site."*

28. The traffic analysis provided by M&E Pacific, Inc., dated March 6, 2002, did not take into consideration the proposed tour component of the requested special use permit or any increased traffic on Mamalahoa Highway since February of 2002.

29. Archaeological surveys of the parcel were done. In August 1996 Cultural Surveys Hawaii, Inc. conducted an Archeological Survey on the subject property. An agricultural site known on the State Inventory as site 20847 was identified. The agricultural field complex 20847 was a remnant fragment of the Kona Field System. It includes mauka/makai kua`iwi, cross slope retaining walls and associated fields. The complex thus "did not represent a good example of either prehistoric or historic agricultural activity within the central Kong region." Site 20847 was recommended for temporary preservation with Limited Data Recovery. Site 20847 was associated with Kamehameha the Great's Kona Field System.

30. As a condition of receiving a grubbing permit No. 004304 and as a condition to the acceptance of the Archeological Survey for the subject property the owner, Doutour Coffee agreed to the preservation of portions of State Site 20847, a complex of

agricultural features. The area of Site 20847 that was to be preserved was to be properly fenced off and an archaeological monitor was to be present as a condition of receiving a Grubbing Permit and of acceptance of the Archeological Survey. No archaeological monitor was present during grubbing. Approximately 90% of the agreed upon permanent preserve area for Site 20847 has been damaged and destroyed by grubbing and grading. The terrace face, that was to be the mauka boundary of the preserve area is the only portion of the preserve area that remains intact.

31. Dating of other features present on the parcel excluding 20847 indicate radiocarbon dating placing occupation of the sites at between 1400 A.D. and the early 1800's.

32. Preservation of portions of site 20847 was recommended by the State Historic Preservation Division in 1996.

33. Despite this recommendation of preservation of portions of site 20847, the site was subsequently destroyed by applicant.

34. An archaeological inventory survey and mitigation plan was prepared by Haun and Associates (2000) and accepted by the State Department of Land and Natural Resources-Historic Preservation Division. Appropriate archaeological data recovery and interim preservation measures were implemented prior to the commencement of grading activities in Year 2000. Dr. Haun conducted an archaeological survey for applicant of the entire 56 acre contiguous parcels owned by applicant in year 2000.

35. Prior to Haun's survey, applicant had constructed various buildings and features on the parcel including a large water feature.

36. The destruction of site 20847 was not mentioned in Haun's report and no evaluation of its significance was noted due to the fact that site 20847 had been previously destroyed.

37. Water is available from the 8-inch waterline situated along the subject property's frontage with the Mamalahoa Highway. The Applicant is not requesting additional water service to support the proposed use. Irrigation water is provided by an onsite well.

38. Wastewater is presently disposed of through a number of cesspools on the property. The Applicant has stated that it will upgrade these existing facilities should it be required by the State Department of Health. Water, electrical and telephone services are available to the property.

39. The State Historic Preservation Division has commented that "This project has already gone through the historic preservation review process, and mitigation has been completed."

40. The Department of Health has commented that "The Department of Health regulates all food processors and food service operations that are open to the public. Please contact our office in Kona at 322-1507 for consultation."

41. The State Department of Transportation has commented that "The proposed action will not impact our State transportation facilities."

42. The State Land Use Commission has commented that "Clarification should be provided as to how the structured and unstructured tours will be conducted. A map depicting the specific area of the tour relative to the subject parcel should be provided. Given the location, scope, and nature of the proposed activity, the State Land Use

Commission defers to the judgment of the County of Hawai'i Planning Commission regarding other matters in the amended application.”

43. The County of Hawai'i Department of Public Works –Engineering Division has commented that:

- a. Buildings shall conform to all requirements of code and statutes pertaining to building construction,
- b. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties,
- c. The Applicant shall be informed that if they include drywells in the subject development, an Underground Injection Control (UIC) permit may be required from the Department of Health, State of Hawai'i,
- d. Flood Zone “AE”, affects the portions of subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 16, 1988, and any new construction or substantial improvements are subject to the requirements of Chapter 27 – Flood Control, of the Hawai'i County Code, all earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawai'i County Code,
- e. Access to Mamalahoa Highway, including the provision of adequate sight distances, should meet with the approval of DPW. Should additional intersection improvements be required by the DPW during the life of the permit, the Applicant shall provide such improvements in a timely manner at no cost to the County of Hawai'i. Streetlights and other traffic control devices shall be installed as required by the Department of Public Works

Traffic Division. The developer shall be responsible for the design, purchase and installation of all such devices.

- f. Applicant should explain how it intends to accommodate and yet accommodate large tour buses within the subject property. Mamalahoa Highway is narrow and winding and is not designed for full size tour buses.
- g. Construction of a bus turnaround along Mamalahoa Highway may violate the approved driveway approach.
- h. Applicant shall remove any encroachments or obstructions within the County right-of-way.”

44. The County Department of Water Supply commented that the average daily water use for the last two years has been 26 units, or 25 units more than the existing 5/8-inch meter is allowed and the meter has been replaced three times since 1991. For these two reasons, we ask that the anticipated maximum daily water usage as recommended by a registered engineer be submitted to the Department for review and approval. The Department reserves the right to make a final determination. The Department of Water Supply will require the installation of a backflow preventer (reduced pressure type) by a licensed contractor on the Applicant's property just after the meter. The installation and assembly of the backflow preventer must be inspected and approved by the Department. The backflow preventer shall be operated and maintained by the customer.

45. The County Police Department commented that current roadway infrastructure at the proposed project site raises concerns of traffic safety. Should this

project become a regular visitor stop and large tour buses are used for transportation. It is recommended that adequate ingress, egress on site parking and turn around areas be a mandate.

Based on the foregoing Findings of Fact, the Hearing Officer reaches the following Conclusions of Law:

CONCLUSIONS OF LAW

1. In considering a Special Permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits require that such action *conform to the following guidelines:*

- a. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- b. The desired use shall not adversely affect surrounding properties;
- c. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- d. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- f. The proposed use will not substantially alter or change the essential character of the land and the present use; and

- g. The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

2. In addition to the guidelines detailed above, the Planning Commission must also find that the proposed use:

- a. Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
- b. Would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The granting of this Amended Application for Special Permit, with certain restrictions and limitations, meet the criteria set forth in paragraphs 1 and 2.

3. The granting of this particular request at this particular location, with certain restrictions and limitations, would be consistent with the objectives sought to be accomplished by the Land Use Law and Regulations and the County General Plan.

The granting of this request will promote the effectiveness and objectives of Chapter 205, Hawai'i 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 Hawai'i.

4. The proposed use is an unusual and reasonable use of land within the Agricultural District. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the Agricultural Districts may not be best suited for agricultural activities and yet

classified as such, and in recognition that certain types of uses may not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. Goals specified within the General Plan states that the County shall *“Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments”* and *“Identify, protect and maintain important agriculture lands on the island of Hawaii.”* The subject parcel, including the project site, is situated on lands designated as “C” or “Fair” according to the Land Study Bureau’s Detailed Land Classification-Island of Hawai’i (1965) and as Unique Agricultural Lands by the Agricultural Lands of Importance to the State of Hawai’i (ALISH) Maps. Unique Agricultural Land are lands other than Prime Agricultural Land that is used for the production of specific high-value food crops. The land has a special combination of soil quality, growing season, temperature, humidity, sunlight, air, drainage, elevation, aspect, moisture supply, or other conditions, such as nearness to market, that favor the production of a specific crop of high quality and/or high yield when the land is treated and managed according to modern farming methods. The proposed public tour operation, if approved, will integrate itself with existing agricultural activities within the project site. While the proposed public tour operations and related activities will encumber a total of 12 acres within the approximately 28.47-acre property, a portion of the 12 acres encompass existing improvements and facilities that serve the existing coffee farm as well as the proposed public tour operations. For example, almost all of the existing pathways used to transport visitors throughout the project site are also utilized to support the various

activities associated with coffee cultivation. Approximately six (6) acres, most of which lie within the 12-acre project site, are heavily landscaped with a myriad of plantings of fruit trees, flowers, shrubbery and lawns. The Applicant does not propose additional buildings or facilities to support the proposed public tour operations. The Applicant has also stated that approximately 13 acres within the 28.472 acre parcel remains available for future plantings of coffee. Through its proposed public tours, the Applicant wishes to conduct its agricultural activities in a manner consistent with the objectives of the State Land Use Law and General Plan by blending together two distinct uses that will mutually benefit each other. The public tour is tightly integrated with and promotes existing agricultural activities within the property through its education about coffee cultivation and the opportunity for personalize planting of a fruit or coffee tree. While approval of this Special Permit will introduce a non-agricultural component (public tours) onto the property, the integration of agricultural activities as part of the public tour operations will not severely compromise the ability of the subject property to support the cultivation of coffee or any other potential crop or product. The public tour operation will provide visitors with an opportunity to experience part of the life cycle of the product that is synonymous with Doutor, sort of a Japanese version of Starbucks. Without the active cultivation of coffee, the subject property will be no more of an attraction than a scenic lookout or a public park. To ensure that the level of agricultural activity occurring within the project site is consistent with the objectives to be accomplished by the State Land Use Law and the General Plan, the Applicant will be required to actively cultivate at least 7 acres of coffee within the subject property in support of the public tour and retail sales operations. The public tour and retail sale operations within the property

shall cease when lands actively cultivated in coffee fall below a total of 7 acres. This conditional requirement will ensure that public tours do not become the primary and dominant activity on the subject property.

5. The desired use will not adversely affect the surrounding properties. The 12 acre project site is situated within a larger parcel consisting of approximately 28.472 acres. Structures that will house the various activities associated with the proposed public tour and retail sales operations are situated throughout the entire 28.472 acre parcel, with the existing parking lot the nearest structure to existing homes at a distance of roughly 100 feet. The distance to the parking lot is adequate to minimize any adverse noise impacts that may be generated by passenger vehicles arriving and parking within the parking lot. Additional landscaping will be required to further minimize noise and visual impacts from the parking lot. A condition of this approval recommendation is that all passenger pick-up and drop-off occur within the existing parking lot to minimize disruptions to traffic caused by the embarking/disembarking of passengers along the shoulders of the Mamalahoa Highway fronting the property. The idling of passenger vehicles will be prohibited to further reduce potential noise and vehicle emissions from impacting nearby neighbors.

Mitigating potential adverse impacts upon adjoining properties can be accomplished by limiting the scale and scope of the proposed public tour and retail sales operations and providing certain operational limitations. Prohibiting night time activities and special events will preserve the agricultural character of the property and surrounding area as well as ensure that neighboring residents are provided with reasonable opportunities to enjoy peaceful evenings. As requested by the Applicant, a maximum total limit of

80 visitors per day should be imposed. The use of amplification equipment for speech or music will also be prohibited. Noise generated by uses related to the public tour and retail operations shall be limited to a maximum of 55 decibels (dbA) at all property lines. Ancillary facilities, such as the retail sales gazebos and barbeque area, shall be utilized solely in support of the public tour operations. For example, the barbeque area shall not be used for special events nor shall it support off-site catering activities. The retail activities shall be limited to specialty products offered to its visitors and not take on the flavor of a general store that targets a market beyond its paying visitors. Passenger vehicles utilized by the Applicant to transport visitors to the project site will be limited to no larger than 15-passenger vans. Unlike the larger tour buses utilized by the Applicant, these smaller vans will be able to negotiate the steep access to the on-site parking area as well as reduce potential traffic conflicts caused by large tour buses traversing along the narrow Mamalahoa Highway. There will be limited short-term construction activities during the compliance phase of the proposed public tour operations as the Applicant attempts to comply with the terms of this approval recommendation, such as the installation of a backflow preventer on the water systems and possible wastewater disposal system upgrades. These activities may result in noise, dust and other construction-related impacts, but these are expected to be short-lived and minimized with the application of standard construction practices. The Applicant has testified that the construction of additional structures and facilities to accommodate the proposed public tour and retail sales operations, beyond the relocated driveway, will not be required. Therefore, construction activities, and the noise and dust associated with it, will be kept at a minimum. The proposed public tours

and related activities will be accommodated by existing facilities already constructed on the subject property. Approval of this request to utilize existing structures for its tour operations will not drastically change the visual characteristics of the subject property or the improvements already located on the property. The Applicant has attested that no additional structures or facilities will be required to accommodate the proposed public tour and related retail sales operations. Limiting hours of operation to between 9:00 am and 4:00 pm daily will prevent nighttime activities and the potential for light and noise pollution onto adjoining properties. Limiting the noise to a maximum of 55 decibels will also reduce the potential for noise pollution onto adjoining properties. As previously mentioned, the installation of additional landscaping to buffer the parking lot from an adjoining property will ensure that the existing visual characteristics of the project site will remain intact.

6. The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, police and fire protection. A traffic impact analysis report dated March 6, 2002 was prepared for the requested use by M&E Pacific, Inc. In summary, the analysis found that *"The addition of non-agricultural products to the retail inventory is not expected to increase visitor traffic."* The study also concluded that *"The small number of trips forecast for the project site with the 'best case scenario' will not have an adverse traffic impact on the local roadway system. Traffic movements at the visitor access to the project site will continue to operate at level of service A on its critical movements. Mamalahoa Highway fronting the project site will continue to operate at level of service B. In actuality, acceptance of the Special Use Permit will not in itself attract more visitors to the project site."* During testimony

provided by Mr. Warren Yamamoto of M&E Pacific, Inc., his finding of no adverse traffic impact on the local roadway system will not change when expected visitor arrivals are increased to 80 visitors per day. This approval recommendation will prohibit the use of large tour buses and limit passenger vehicles to a maximum passenger capacity of 15. Prohibiting large tour buses will resolve concerns expressed by the Department of Public Works regarding the ability of the Mamalahoa Highway to accommodate such large buses. A proposed turn-around for buses along the Mamalahoa Highway will not be necessary since all buses and vehicle arrivals will be required to be accommodated on-site within the existing parking area. Water is available from the 8-inch waterline situated along the subject property's frontage with the Mamalahoa Highway. Irrigation water is provided by an onsite well. As recommended by the Department of Water Supply, the Applicant will be required to submit anticipated maximum daily water usage calculations, prepared by a registered engineer, to the Department of Water Supply for review and approval. The Department of Water Supply will reserve the right to make a final determination regarding any additional improvements that may be necessary, which shall be provided by the Applicant at no cost to the County. The installation of a backflow preventer will also be required. The Applicant has indicated that it will comply with the requirements of the Department of Water Supply, Department of Health, and the Fire Department. Compliance with the requirements of these agencies will be made a condition of this approval recommendation to ensure that the safety of its guests through the availability of adequate fire protection and compliance with food service standards. Wastewater is presently disposed of through a number of cesspools on the property. The Applicant has stated that it will upgrade these existing facilities should it

be required by the State Department of Health. All other essential public utilities and facilities are or will be made available to support the proposed use.

7. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The State and the County, through its land use laws, have the fiduciary responsibility of protecting its important agricultural lands located in limited quantities throughout the state. However, the protection of these lands cannot be accomplished without consideration of non-agricultural uses that, when combined, creates a mutually beneficial relationship that enhances the ability of an entity to utilize these important agricultural lands in an economically feasible manner. Doutor Coffee Co. Hawai'i, Inc. has created one of the largest coffee plantations on this island. In order to promote its brand of Kona coffee as well as Kona coffee industry as a whole, the County must consider various non-agricultural options that could have a secondary, beneficial effect upon a landowner's ability to cultivate their land. The subject property provides an excellent case-in-point. While the quality and reputation of Kona coffee is well-established and well-known throughout the world, its continued success is dependent upon continuing education and marketing of the unique qualities of Kona coffee to individuals abroad. The proposed public tours and retail sales will provide a educational and sensory experience to the visitors of *Mauka Meadows* who will witness the growth of coffee from sapling to mature tree and its preparation from coffee cherry to the roasted bean. Many visitors probably have never seen coffee except for its final form in a can or jar. Through its proposed tour, the Applicant will present the unique qualities of the land and the cultivation of its coffee trees that when combined, preserves the unique qualities of Kona coffee that make its

consumption such a delight. When a visitor witnesses first-hand how a product is made, there is a greater appreciation for all the things that make that product so unique. It is that emotional relationship to the product that will reinforce a sense of loyalty to its continued use. In the final analysis, approval of the proposed public tour and retail sales operations will promote the use of important agricultural lands within the project site by expanding the awareness and demand for this special coffee that only comes from the districts of North and South Kona.

8. The land on which the proposed use is sought is unsuited for the uses permitted within the district. While this particular criteria for approval of a Special Permit seeks to utilize “unsuitable” agricultural lands for non-agricultural types of uses, the Planning Department feels that certain non-agricultural uses may be appropriate on lands that are suitable for agriculture, such as is the soils found within the project site. The Planning Department is seeking a balance of co-existing agricultural and non-agricultural uses that are mutually beneficial to each other. The current economic climate within the agriculture industry emphasizes the importance of seeking innovative means to sustain itself. The Applicant’s proposal is one such innovative approach to enhancing the cultivation and productivity of the lands upon which the public tours and retail operations will be established. The proposed tour and retail sale operations will utilize existing structures and facilities and will not require the commitment of additional lands solely for the purpose of accommodating these non-agricultural uses.

9. The use will not substantially alter or change the essential character of the land and the present use. With the integration of its public tours and retail activities within its on-going coffee cultivation operations, the proposed uses will not significantly

change the fundamental agricultural character of the project site or the surrounding area. No additional structures or facilities are being contemplated by the Applicant to accommodate the proposed uses. Aesthetically, the frequency of passenger vans and tour buses arriving to and departing from the project site is probably the most visible component of the proposed public tour operations and which causes the most disruption to the surrounding agricultural community. Conditions of this approval recommendation will preserve, to the greatest extent possible, the existing agricultural character of the property and surrounding area by limiting the scale and scope of the proposed public tour and retail operations. As previously mentioned, restrictions on the maximum number of visitors, prohibiting use of large tour buses, restricting night-time activities or special events, and tying the availability of the public tours with a minimum level of cultivation of the property in coffee will preserve the agricultural character of the project site. The project site, with its extensive landscaping, water feature and walking paths, is not typical of what many may consider a "farm" or coffee plantation. These improvements were approved and permitted on the property prior to the filing of the Special Permit application. There is no law prohibiting such features or landscaping on a coffee plantation or farm. There is also no law that requires all coffee plantations to maintain a rustic appearance. The Applicant brings a unique approach to the establishment of a coffee plantation by maintaining a working plantation on well-manicured lands. This approach, while unusual, is certainly attractive and promotes diversity in how a landowner promotes their efforts to cultivate Kona coffee. Some growers may present their farm as a rustic, roadside farm operating out of a small house and coffee shack. Doutor Coffee Co. Hawai'i, Inc. has elected to present its

coffee plantation in a manner that is much more structured. There is nothing wrong with both approaches since both achieve its desired mark; the promotion of Kona coffee.

An archaeological inventory survey and mitigation plan was prepared by Haun and Associates (2000) and accepted by the State Department of Land and Natural Resources-Historic Preservation Division. Appropriate archaeological data recovery and interim preservation measures were implemented prior to the commencement of grading activities in Year 2000. Therefore, significant adverse impacts to archaeological resources have already been mitigated as confirmed by the Department of Land and Natural Resources in its memorandum to the Planning Director. It should be noted that within the 12 acre project site, identified archaeological features currently existing are ranch walls located along the northern (Site 5084) and southern (Site 18659) boundaries as well as a wall that goes roughly through the middle of the project site (Site 20846). These sites were found important for its information content only.

A former archaeological complex (20847) located within the subject property was originally targeted for data recovery and preservation but most of which has since been destroyed by the Applicant. The loss of significant Hawaiian agricultural features such as those represented at site 20847 cannot be measured in economic terms. A revised mitigation plan for the remains of Site 20847 was prepared with data recovery for the boundary and ranch walls complete. A heiau was identified in the vicinity of the project site during testimony presented at the contested case hearing on this particular application. Dr. Alan Haun, qualified as a expert during the proceedings, testified that the heiau is situated on lands located makai of the project site on an adjoining property

also owned by the Applicant. The 12 acre area within the project site identified to be utilized for the public tour and retail sale operations did not include the location of the heiau and is therefore not a part of lands being considered by this Special Permit application.

The subject parcel is not adjacent and/or proximate to the shoreline. As such, fishing and coastal access is not an issue. Radiocarbon results suggest that the initial agricultural use of the area began in the early 1400's with the formation of Kua`iwi followed by the construction of terraces within a few decades and continued in use until at least the early to mid 1800's. Since then, the site has been used agriculturally for cattle grazing in the more distant past. The site has been used agriculturally for cattle grazing in the more distant past. Since the Applicant acquired the parcel in 1989, it has been transformed into a coffee farm with other related improvements. Almost all of the existing vegetation on the parcel now consists of introduced plant species.

In the event of documented claims of gathering are made of this parcel, the Applicant will honor them. The Planning Director is generally supportive of visitor attractions and facilities on agricultural lands similar in scope and scale to that being requested by the Applicant when its impact upon surrounding properties are relatively minor and is clearly subordinate to and supportive of agricultural activities occurring on the same property. This position can clearly be distinguished from proposed visitor attractions and facilities that provide little, if any, support to agricultural activities on the same property and have much greater impacts upon the surrounding community.

10. Approval of the subject request will be consistent with the following goals, policies and courses of action of the Land Use and Economic Elements of the General Plan:

- a. Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- b. Protect and encourage the intensive utilization of the County's important agricultural lands.
- c. The County shall protect important agricultural lands within the Kona Coffee Belt.
- d. The County shall assist the expansion of the agricultural industry, especially diversified agriculture, through the protection of important agricultural lands, capital improvements and other programs, and continued cooperation with appropriate State and Federal agencies.
- e. The County shall strive for diversity and stability in its economic system.
- f. The County of Hawai'i shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

11. Granting of a Special Permit to allow public tours of the existing coffee farm, proposed retail sales of non-agricultural products and a related parking area within the project site would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (State Land Use Law).

Based on the foregoing Findings of Fact and Conclusions of Law, your Hearing Officer makes the following Recommendation.

DECISION AND ORDER

The Amended Application for Special Permit is approved by the Planning Commission subject to the following conditions:

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

The Applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. Anticipated maximum daily water usage for the subject property as recommended by a registered engineer shall be submitted to the Department of Water Supply within one month from the date of approval of this permit. Based on the water usage calculation, the Applicant shall provide all necessary improvements to the property's existing water service as may be required by the Department of Water Supply, including the installation of a backflow preventer. All water system improvements shall be provided by the Applicant at no cost to the County, prior to the establishment of the public tour and retail sales operations.

3. The proposed public tour and retail sales operations shall be established within two (2) years from the effective date of this permit. Prior to establishing this use, the Applicants shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify all existing structures, parking area(s), access driveways and landscaping associated with the proposed uses. As a minimum to preserve and protect

the character of Yokoyama's property, additional heavy landscaping shall be indicated on plans along the common east-west boundary of the project site and TMK: 7-5-11: 26 for the purpose of visual and noise mitigation. The Applicant shall notify the Planning Department, in writing, of the completion of required improvements prior to commencing operation of the proposed public tours and retail activities.

4. The public tours and retail sales of non-agricultural items shall be conducted in conjunction with the active cultivation of at least seven (7) acres of coffee within the 28.472 acre property. Should active cultivation of coffee within the subject property fall below seven (7) acres, all public tours and the sale of non-agricultural items shall immediately terminate upon written notification by the Planning Director. Public tours and the sale of non-agricultural items may re-commence upon written clearance from the Planning Director that the requirements of this condition has been satisfied.

5. The public tours and retail sales of non-agricultural items within the subject property shall be conducted with the following limitations:

- a. Public tours and retail sales shall be limited to the hours between 9:00 a.m. and 4:00 p.m., daily.
- b. The public tours shall be limited to a maximum total of 80 visitors per day, including tours by company franchisees;
- c. Passenger vehicles used to transport visitors to the project site shall be limited to a capacity not to exceed 15 passengers;
- d. Employee and visitor parking and the embarking/disembarking of passengers shall be conducted solely within the existing parking area and shall be prohibited along any portion of the Mamalahoa

Highway. Excessive idling of vans awaiting passengers are prohibited;

- e. Weddings, concerts, conventions and other types of special events and activities shall be prohibited on the subject property;
- f. Use of amplification devices for speech and music shall be prohibited throughout the subject property;
- g. The existing retail sales gazebos and barbeque area shall be utilized in direct support of the approved public tour operations and shall not be made available for catered or special events not related to the coffee industry or available for use by the general public;
- h. Noise associated with the public tours and retail activities shall not exceed a maximum level of 55 decibels (dbA) along any property boundary, except along its frontage with the Mamalahoa Highway.
- i. Access for the project site from the Mamalahoa Highway shall meet with the approval of the Planning Director. All encroachments situated along the subject property's frontage with the Mamalahoa Highway right-of-way shall be removed in a manner meeting with the approval of the Department of Public Works, prior to the establishment of the approved uses.

6. Prior to the establishment of the public tour and retail sales operations, the Applicant shall satisfy all applicable requirements of the Department of Health regarding wastewater disposal and food service activities, applicable requirements of the Fire Department, and applicable building permits.

7. 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 Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken. In the event of documented claims of gathering are made of this parcel, the Applicant will honor them.

8. Applicant shall take steps to ensure that the use and development of the site is conducted with greater sensitivity and respect for Native Hawaiian history and culture than was demonstrated in the past. In the event of documented claims of gathering are made of this parcel, the Applicant will honor them.

9. 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, 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 any unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

10. An initial extension of time for the performance of conditions within 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 Applicants, 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 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).

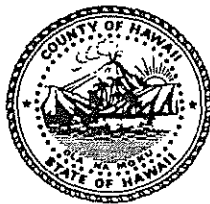
Dated: Hilo, Hawai'i August 18, 2003

By:

Fred Galdones
FRED GALDONES, Chairman
Planning Commission

01805

Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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November 9, 2004

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Dear Ms. Broder, Counsels and Ms. Roy:

Amended Special Permit Application (SPP 02-010/SPP 1215)
Applicant: Doutor Coffee Co. Hawaii, Inc.
Request: To Allow Public Tour of the Existing Coffee Farm,
Retail Sales of Non-Agricultural Products and Related Parking Area
Tax Map Key: 7-5-011:Portion of 024

The Planning Commission at its October 22, 2004 meeting had a discussion/executive session on the effect of and whether to appeal the Third Circuit Court's September 23, 2004, decision entitled: "Appellants Dean Yokoyama and Kulana Huli Honua's Joint Findings of Fact, Conclusions of Law, and Order Granting Appellants Dean Yokoyama and Kulana Huli Honua's Appeal from the County of Hawaii Planning Commission's Findings of Fact; Conclusions of Law; and Decision and Order dated August 19, 2003, in SPP 02-010." Special Permit No. 1215 allowed public tours of the existing coffee farm, proposed retail sales of non-agricultural products, and related parking area on approximately 12 acres of a 28.47-lot situated within the State Land Use Agricultural District. The property is located on the west (makai) side of Mamalahoa Highway, approximately 300 feet south of the Keopu Cemetery, Hienaloli 2nd, North Kona, Hawaii.

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Ms. Broder, Counsels and Ms. Roy
Page 2

The Commission then directed the Board's attorney, Ivan Torigoe, to exercise his discretion to join in as an appellee or as a nominal party in this matter to take positions to protect the Hawaii County Planning Commission's decision and authority.

Should you have questions regarding this matter, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Galtones", written in a cursive style.

Fred Galtones, Chairman
Planning Commission

cc: Christopher J. Yuen, Planning Director
Planning Department – Kona
Patricia K. O'Toole, Esq.

8/22/04
12/15
9/22/04
FILED mt ✓

Of Counsel:
ASHFORD & WRISTON
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2004 SEP 23 AM 9: 01

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Attorneys for Appellant
KULANA HULI HONUA

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

DEAN YOKOYAMA)
))
 Appellant,)

CIVIL NO. 03-1-0160K
(Kona) (Administrative Appeal)
(Consolidated)

vs.

DOUTOR COFFEE CO. HAWAII, INC.)
and PLANNING COMMISSION OF))
THE COUNTY OF HAWAII,))
))
 Appellees.)

APPELLANTS DEAN YOKOYAMA
AND KULANA HULI HONUA'S
JOINT FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING APPELLANTS
DEAN YOKOYAMA AND
KULANA HULI HONUA'S APPEAL
FROM THE COUNTY OF HAWAII
PLANNING COMMISSION'S
FINDINGS OF FACT;
CONCLUSIONS OF LAW; AND
DECISION AND ORDER DATED
AUGUST 19, 2003, IN SPP 02-010

I hereby certify that this is a full, true and correct
copy of the original as filed in this office:
[Signature]
Clerk, Third Circuit Court, State of Hawaii

KULANA HULI HONUA,)
)
 Appellant,)
)
 vs.)
)
)
)
)
)
 DOUTOR COFFEE CO. HAWAII, INC.)
 and PLANNING COMMISSION OF)
 THE COUNTY OF HAWAII,)
)
 Appellees.)

CIVIL NO. 03-1-0163K
 (Kona) (Administrative Appeal)
 (Consolidated)

Oral Argument:
 Date: July 26, 2004
 Time: 10:30 a.m.
 Judge: Honorable Ronald Ibarra

**APPELLANTS DEAN YOKOYAMA AND KULANA HULI HONUA'S
 JOINT FINDINGS OF FACT, CONCLUSIONS OF LAW,
 AND ORDER GRANTING APPELLANTS DEAN YOKOYAMA AND KULANA
 HULI HONUA'S APPEAL FROM THE COUNTY OF HAWAII PLANNING
 COMMISSION'S FINDINGS OF FACT; CONCLUSIONS OF LAW;
 AND DECISION AND ORDER DATED AUGUST 19, 2003, IN SPP 02-010**

Appellant DEAN YOKOYAMA ("Appellant Yokoyama") filed his Notice of Appeal in Civil No. 03-1-160K on September 18, 2003, appealing the action of the Appellee PLANNING COMMISSION OF THE COUNTY OF HAWAII ("Appellee Commission") in approving the Application of Appellee DOUTOR COFFEE CO. HAWAII, INC. ("Appellee Doutor") in SPP 02-010, by making Findings of Fact; Conclusions of Law; and Decision and Order dated August 19, 2003, in SPP 02-010.

Appellant KULANA HULI HONUA ("Appellant Kulana") filed a separate appeal of the Findings of Fact; Conclusions of Law; and Decision and Order dated August 19, 2003, of Appellee Commission in Civil No. 03-1-163K. On December 3, 2003, this Court ordered that Civil No. 03-1-160K and Civil No. 03-1-163K be consolidated.

Oral argument was heard in this matter on July 26, 2004, at 10:30 a.m. before the Honorable Ronald Ibarra. Dennis A. Krueger appeared on behalf of Appellant Yokoyama, Shawn M. Nakoa appeared on behalf of Appellant Kulana, Patricia K. O'Toole appeared on behalf of the Appellee Commission, and Michael W. Moore appeared on behalf of Appellee Dotor. The Court, having reviewed the briefs and exhibits submitted, and having heard the arguments of counsel, makes the following Findings of Fact, Conclusions of Law, and Order Granting Appellants Dean Yokoyama and Kulana Huli Honua's Appeal From the County of Hawaii Planning Commission's Findings of Fact; Conclusions of Law; and Decision and Order Dated August 19, 2003, in SPP 02-010 as follows:

FINDINGS OF FACT

To the extent that these Findings of Fact contain Conclusions of Law, they shall be considered as such.

1. The Findings of Fact; Conclusions of Law; and Decision and Order dated August 19, 2003, ("Decision"), were entered in a contested case concerning Amended Special Permit Application No. 02-010.

2. The Decision constitutes a final decision and order in a contested case. In the alternative, the Order constitutes a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive Appellants of adequate relief.

3. Appellant Yokoyama is an individual residing in Holualoa, Hawaii, on property designated as Tax Map Key No. (3) 7-5-011-026.

4. Appellant Kulana is a 501(c)(3) Hawaii non-profit corporation, formed in 1999, to preserve and protect Hawaiian sacred and historic sites, educate Hawaii and the world in the Hawaiian way of life, and to establish Hawaiian archives for the future.

5. Appellee Commission is an administrative agency of the County of Hawaii, which is a municipal corporation that is organized under the laws of the State of Hawaii.

6. Appellee Doutor is a Hawaii corporation, with its principal place of business in Kailua-Kona, Hawaii, and the owner of Tax Map Key No. (3) 7-5-011-portion of 24 ("subject property").

7. Jurisdiction is proper pursuant to Hawaii Revised Statutes ("HRS") § 603-21.8, HRS § 91-14, and Rule 72 of the Hawaii Rules of Civil Procedure.

8. Appellant Yokoyama and Appellant Kulana were participants in the contested case hearing before the Appellee Commission out of which the Decision arose and are aggrieved persons/entities for purposes of Haw. Rev. Stat. § 91-14.

9. On February 4, 2002, Appellee Doutor submitted an application for a Special Permit to allow for the retail sales of non-agricultural products within an area not to exceed 1,000 square feet under roof on an approximately 1.00 acre portion of the subject property.

10. In April of 2002, after a meeting with the Planning Director on April 10, 2002, Appellee Doutor amended its application to reflect Appellee Doutor's additional request for structured and unstructured tours of a portion of the subject property by the public, in addition to its earlier request for the retail sale of non-agricultural products.

11. The 12 acre area for which Appellee Dotor seeks the Special Permit is not defined by any metes and bounds description, nor is it an area that has been subdivided from the remainder of the 28.47 acres.

12. Rules of Practice and Procedure for the Planning Commission of the County of Hawaii, Rule 6-3(2), requires that an Applicant for a Special Permit describe the property in sufficient detail to determine its precise location.

13. Appellee Dotor did not describe the subject property in sufficient detail to determine its precise location.

14. Rules of Practice and Procedure for the Planning Commission of the County of Hawaii, Rule 6-4, states that the Planning Commission, through the Planning Department, shall neither accept nor process an application which is incomplete as to form and content.

15. Appellee Commission accepted Appellee Dotor's incomplete application.

16. Rules of Practice and Procedure for the Planning Commission of the County of Hawaii, Rule 6-5, requires the Petitioner to mail notice of the application and the date of hearing on the application to owners within 300 feet of the perimeter boundary of the affected property and to owners of interests in other properties which the Planning Commission may find to be directly affected by the proposed request. Pursuant to Rule 6-5(b)(2), the notice is to state the precise location of the property involved.

17. Appellee Dotor did not provide adjacent property owners with the precise location of the property involved.

18. If the proposed special permit involves more than 15 acres of land, Rule 6-7 of the Rules of Practice and Procedure for the Planning Commission of the County of

Hawaii, requires the County to first recommend approval to the State Land Use Commission ("LUC") by stating the reasons and attaching appropriate performance conditions, or to deny the application, stating the reasons for denial. Thereafter, Hawaii Revised Statutes, § 205-6 (e) allows the LUC to approve, approve with modifications, or deny the petition within 45 days after receipt from the County Planning Commission.

19. Appellee Commission did not know if the area encompassed by the special permit was greater than 15 acres and thereby subject to the above-referenced provision of Rule 6-7.

20. Appellee Commission did not know the precise location of the property involved and therefore could not have entered specific findings with regard to (1) the identity and scope of valued cultural, historical, or natural resources in the subject parcel; (2) the extent to which those resources will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the Commission to reasonably protect native Hawaiian resources on the subject property.

21. Failure to identify the precise location of the subject parcel makes enforcement of any remedies or mitigation plans by Hawaiian organizations such as Appellant Kulana impossible.

CONCLUSIONS OF LAW

The Court, based upon the above-referenced Findings of Fact, makes the following Conclusions of Law. To the extent that these Conclusions of Law contain Findings of Fact, they shall be considered as such.

1. This Court has jurisdiction over all the parties in this action and all the claims presented therein.

2. The Application of Appellee Dotor violates Rules of Practice and Procedure for the Planning Commission of the County of Hawaii, Rule 6-3(b)(2), in that it fails to describe the subject property in sufficient detail to determine its precise location.

3. Appellee Commission failed to follow its own rules by accepting an incomplete application in violation of Rule 6-4 of the Rules of Practice and Procedure for the Planning Commission of the County of Hawaii.

4. Appellee Dotor failed to comply with Rule 6-5 of the Rules of Practice and Procedure for the Planning Commission of the County of Hawaii, because it did not have a precise location of the property involved, and for the purpose of the notice to adjacent property owners, could not have provided them with the precise location of the property involved.

5. Appellee Commission erred in approving the special permit without knowing the size and precise location of the area for the proposed use, and whether or not it exceeded 15 acres, thereby requiring subsequent review by the LUC.

6. Appellee Commission's failure to obtain a precise location of the property subject to the special use permit made it impossible to identify and protect cultural, historical or natural resources in violation of Article XII, § 7 of the Hawaii State Constitution.

7. The Order of the Appellee Commission is inconsistent with and, therefore violates, applicable law, including but not limited to, the Hawaii State Constitution,

Article XII, § 7, Haw. Rev. Stat., Chapter 205, Hawaii County Code, Chapter 25, and the Rules of Practice and Procedure for the Planning Commission of the County of Hawaii.

ORDER GRANTING APPELLANTS DEAN YOKOYAMA AND KULANA HULI HONUA'S APPEAL FROM THE COUNTY OF HAWAII PLANNING COMMISSION'S FINDINGS OF FACT; CONCLUSIONS OF LAW; AND DECISION AND ORDER DATED AUGUST 19, 2003, IN SPP 02-010

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to Hawaii Revised Statutes § 91-14(g),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) The Special Permit issued in SPP 02-010 is void and of no further force or effect.

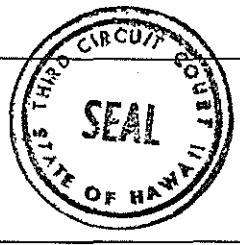
(2) Appellee Dotor must resubmit its Application to the County of Hawaii, give appropriate notice to adjacent property owners of its proposed application, along with the precise location of the property involved, and provide accurate information on its entire tour operation consistent with the above-referenced Findings of Fact and Conclusions of Law, and in accordance with all State and Local laws, ordinances and rules.

(3) Until such time as Appellee Dotor has obtained a new special permit, it must immediately cease any further structured or unstructured tours on the subject property, and the retail sale of non-agricultural products.

↳ (4) Appellants are awarded their reasonable attorneys' fees and costs on appeal.] ↖

DATED: Kealahou, Hawaii; 9/22/04

[Handwritten Signature]



JUDGE OF THE ABOVE-ENTITLED COURT

↳ I deleted. Appellants have not cited any legal authority for fees and costs on an administrative appeal. K

Dean Yokoyama vs. Doutor Coffee Co. Hawaii, Inc., et al.; Civil No. 03-1-0160K consolidated with Civil No. 03-1-0163K; Circuit Court of the Third Circuit (Kona)
APPELLANTS DEAN YOKOYAMA AND KULANA HULI HONU'S JOINT FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING APPELLANTS DEAN YOKOYAMA AND KULANA HULI HONU'S APPEAL FROM THE COUNTY OF HAWAII PLANNING COMMISSION'S FINDINGS OF FACT; CONCLUSIONS OF LAW; AND DECISION AND ORDER DATED AUGUST 19, 2003, IN SPP 02-010