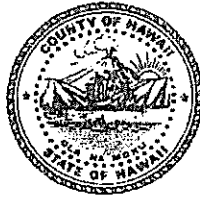


Harry Kim  
Mayor



**County of Hawaii**  
**PLANNING COMMISSION**

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(808) 961-8288 • Fax (808) 961-8742

DEC 02 2002

Mr. Jeffrey M. Citron  
Diversified Land Management  
P.O. Box 982  
Captain Cook, HI 96704

Dear Mr. Citron:

Special Permit Application (SPP 02-026)  
Applicant: James K. Simmons, Sr.  
Request: To Legitimize an Existing Contractor's Baseyard for  
Storage of Equipment and Excavated Materials  
Tax Map Key: 8-3-10:52

The Planning Commission at its duly held public hearing on November 1, 2002, voted to approve the above-referenced application. Special Permit No. 1182 is hereby issued to allow the establishment of a contractor's baseyard to include the storage of excavation and paving equipment, and temporary storage of excavated materials and aggregate on approximately 2.975 acres of land in the State Land Use Agricultural District. The property is located on the east side (mauka) of Middle Ke'ei Road, approximately 500 feet north of its intersection with Māmalahoa, Highway, Hōnaunau, South Kona, Hawaii.

Approval of this request is based on the following:

The Planning Commission would ordinarily encourage landowners or applicants with light industrial uses to locate in an Industrial zoned district or to file for a change of zone request for such development. In this case, however, upon reviewing the circumstances of the request to legitimize an existing contractor's baseyard where its primary service area is within the immediate vicinity, the Planning Director supports an approval of this Special Permit.

The applicant is applying for a special permit to legitimize a contractor's baseyard to include the storage of excavation and paving equipment, and temporary storage of excavated materials and aggregate on approximately 2.975 acres of land. The baseyard will be primarily used for storing equipment and aggregate material. Equipment is used on the job site and stays off-site until the job is done. The applicant has been leasing the

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property for his business for approximately 15 years. Although there is a single family residence located on the southern half of the property, there are no structures related to the baseyard operation on the subject property.

The Planning Director issued a letter dated April 17, 2002 citing Mr. and Mrs. Gideon Awa with an alleged zoning violation regarding the operation of a junkyard in an Agricultural District on the subject property. The applicant requested an extension to clean up the property. The Planning Director granted an extension pending the outcome of the special permit. Subsequently, the applicant submitted the special permit application to legitimize the baseyard operation to the Planning Department.

The existing use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), as amended. In recognizing that lands within the agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might 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. In addition, 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 land on which the existing use is located is classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and classified as Other Important Agricultural lands by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property consists of Kona extremely rocky muck. There is no active agricultural activity occurring on the property. As such, the existing use will not significantly deplete the County of Hawaii's agricultural resources.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to coastal zone management program. Given the fact that the property has been previously developed, it is unlikely that any archaeological features and threatened species of plants or animals are present on the property. There is no designated public access to the mountain areas nor to the shoreline over the property. The project site is located about 2 miles from the nearest shoreline and is in close proximity to an existing mix of agricultural, residential-based and vacant lands. The existing operation will not impact any recreational resources, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the property will not be affected by

any coastal hazards nor beach erosion. Therefore, the approval of the subject request shall not be contrary to the objectives and policies of the Coastal Zone Management Program.

The request is not contrary to the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map that defines the subject property and its immediately surrounding area for Orchards. The use is consistent with the following goals and policies of the General Plan:

*Economic Element:*

- Provide residents with opportunities to improve their quality of life.
- 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 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.

*Land Use - Industrial Element:*

- Designate and allocate industrial areas in appropriate proportions and in keeping with the social, cultural, and physical environments of the County.
- Industrial activities may be located close to raw materials or key resources.

The desired use will not adversely affect surrounding properties. Immediate surrounding lands are predominantly single-family residential uses, agricultural uses, some commercial uses by a special permit and vacant lands. Surrounding properties are zoned Agricultural (A-1a, A-3a & A-5a) and consists of dwellings, commercial uses (by Special Permits) and agricultural uses. The adjacent lot to the south (Kau) has a dwelling. Adjacent to the property along Māmalahoa Highway is a commercial structure with the Ke'ei Café and a gas station. Across the street is the Kona Seafood. Further north along, the Māmalahoa Highway is Konaside Coffees and Epicurean. Adjacent to

the north is a dwelling along the Middle Ke'ei Road frontage (Mr. Shubin). Across the Middle Ke'ei Road are scattered dwellings.

Major concerns were expressed from the community regarding the visual impacts from the junk yard operation as well as oil spillage and contamination of the ground. However, the special permit request is to legitimize the baseyard operations. Upon clean up of the subject property in accordance with applicable agency requirements and the installation of landscaping along the Māmalahoa frontage, the entire length of the northern boundary, and along Middle Ke'ei Road, it is not anticipated that the baseyard operation will adversely impact the surrounding neighborhood. A condition shall be imposed to require the applicant to clean up the property within six (6) months of the effective date of this approval. Further, all visible existing junk machinery, vehicles and equipment shall be removed within three (3) months of the effective date of this permit. In addition, damaged and inoperable vehicles and equipment shall not be stored on the subject property as is presently. Further, only baseyard related equipment shall be repaired and maintained on the property. Finally, the baseyard operations shall be conducted in substantial compliance with representations made in the subject special permit application.

There is a dwelling on the southern half of the subject property with a separate driveway access. The baseyard operation is located on the northern half of the subject property with access from a gravel driveway fronting the Middle Ke'ei Road. Although there is also a driveway along the Māmalahoa Highway, it will not serve as access. Hours of operation will be from Monday through Saturday, 8:00 a.m. to 5:00 p.m. To minimize the visual impact to immediate surrounding property owners, an opaque landscaping barrier shall be installed along the Māmalahoa Highway frontage, along the entire north boundary, and along Middle Ke'ei Road between the two driveways shall be included as a condition. The applicant shall submit a landscaping plan in conjunction with plans submitted for Plan Approval. With the installation of appropriate landscaping along the property boundaries and limited business hours, noise and visual impacts upon the adjoining properties can be adequately mitigated and the character of the surrounding area will not be significantly altered. Furthermore, concerns of adjoining and nearby owners regarding disposition of waste material will be incorporated as conditions of approval.

The existing baseyard operation will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. In regards to the zoning violation of operating a junk yard, the applicant shall clean up the property within six (6) months from the effective date of this permit. Further, concerns were expressed in regards to hazardous materials and fuel storage on the subject property. As previously stated, a condition will be included that all visible

existing junk machinery, vehicles and equipment shall be removed within three (3) months of the effective date of this permit. The applicant shall also comply with applicable agency requirements, including the Environmental Protection Agency, Department of Health and the County Fire Department to ensure that the property is maintained in a safe and non-hazardous manner. Access to the baseyard operations shall be limited to Middle Ke'ei Road and conform to Chapter 22, Streets and Sidewalks, of the Hawai'i County Code. In addition, the applicant will be required to submit an erosion control plan to the Department of Public Works for approval. All other essential utilities and facilities are available to support the existing use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, various "non-agricultural" services and uses can be established. The applicant has been in operation for over 15 years and is providing a needed service in the area. Jim Simmons Construction is the only licensed excavation and paving contractor in the District of South Kona. Approximately 90% of his business is generated from this area. According to the applicant, he provides essential services such as clearing, grading, plowing, reservoir and roadway construction in the South Kona District. Ideally, relocation to an area of industrial-zoned lands would be more appropriate for a baseyard operation and related activities. However, the closest industrial zoned lands in Kona are limited to locations in HOST Park/Keahole Airport, Kaloko Light Industrial Subdivision, Kohanaiki Business Park, Honokohau, the old Kailua Airport and Kona Industrial Subdivision. Requiring him to relocate in Kailua-Kona would require him to unduly haul heavy equipment from that location. As there are no commercial and industrial-zoned lands available in the immediate area, with no immediate future plans to designate such, the issuance of a Special Permit would be appropriate for this area.

The land upon which the existing use is sought is unsuited for the uses permitted within the district. The soils within the subject property is classified as "E" or Very Poor for agricultural productivity and unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property primarily consists of Kona extremely rocky muck. In addition, the Special Permit process, established by legislation, allows for other uses to be established for which the district is classified, provided the objectives of Chapter 205, HRS, are promoted. Therefore, the existing use is an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended.

Based on the above considerations, the approval of the Special Permit request to legitimize a contractor's baseyard for storage of equipment and excavated materials would be supportive of the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. Clean up of the existing property, including any hazardous waste, shall be completed within six (6) months of the effective date of this permit. All visible existing junk machinery, vehicles and equipment shall be removed within three (3) months of the effective date of this permit.
3. The applicant shall collect and dispose of all waste oil, batteries, tires, etc., in accordance with all applicable government regulations. A letter of clearance from applicable agencies, including the Environmental Protection Agency, Department of Health, and Fire Department, shall be submitted to the Planning Department upon completion with the cleanup.
4. The contractor's baseyard operations shall be conducted in substantial conformance with representations made in the application.
5. Only baseyard equipment shall be repaired and maintained on the subject property. The storage of inoperable and damaged vehicles and equipment shall not be permitted on the subject property.
6. Final Plan Approval for the operation shall be secured from the Planning Director within six (6) months from the effective date of this permit in accordance with the Zoning Code. Plans shall identify the existing structures, lighting, signage, fire protection measures, fuel storage, parking stalls, driveway and other improvements associated with the use. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. Landscaping shall be created and maintained as an opaque visual barrier at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along Māmalahoa Highway, the entire length of the north property boundary, and along Middle Ke'ei Road between the two driveways. Property pins shall be identified in order to properly establish landscaping buffers.
7. The required landscaping, which may include existing plant life, shall be installed within six (6) months from the completion of the clean up.

8. No mechanical crushing of raw aggregate materials shall occur on the subject property.
9. Water shall be made available for the subject baseyard operations, including the installation of a backflow preventer, meeting with the requirements of the Department of Water Supply within six (6) months from the effective date of this permit.
10. Access to the subject property from Middle Ke'ei Road shall conform to Chapter 22, Streets and Sidewalks, of the Hawai'i County Code, meeting with the approval of the Department of Public Works.
11. The applicant shall prepare and submit an Erosion Control Plan to the Department of Public Works for approval. The applicant shall implement the approved erosion control plan. A copy of the approved plan shall be submitted to the Planning Department prior to the issuance of Final Plan Approval.
12. A Solid Waste Management Plan shall be submitted to the County Department of Environmental Management for review and approval. A copy of the approved plan shall be submitted to the Planning Department prior to the issuance of Final Plan Approval.
13. The hours of operation shall be limited to the hours between 8:00 a.m. to 5:00 p.m., Monday through Saturday.
14. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for the existing use, including the Environmental Protection Agency, Department of Health and Fire Department.
15. The monthly progress report shall be submitted to the Planning Director until the property is cleaned properly. If the Planning Director finds at any time that good faith reasonable efforts to complete the clean up are not being made, the Planning Director shall initiate revocation proceedings immediately.
16. A final status report shall be submitted to the Planning Director demonstrating compliance with all conditions and a final inspection shall be conducted by the Planning Department.
17. 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

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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.

18. 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 applicant, successors, or assigns and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the 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).

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 contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman  
Planning Commission

Lsimmons01PC

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
Brian Minaai, Director/DOT-Highways, Honolulu