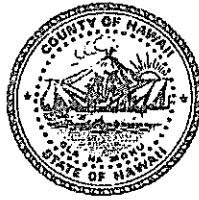


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

DEC 16 2002

Mr. Reynolds Henderson
36 Poko Street
Hilo, HI 96720

Dear Mr. Henderson:

Special Permit Application (SPP 02-036)
Applicant: Leonard Cardoza
Request: Legitimize the Sale of Stockpiled Topsoil
Tax Map Key: 2-8-007:Portion of 001

The Planning Commission at its duly held public hearing on November 15, 2002, voted to approve the above-referenced application. Special Permit No. 1188 is hereby issued to legitimize the sale of stockpiled topsoil on approximately 3.76-acre portion of a 776±-acre parcel in the State Land Use Agricultural District. The project area is located southwest of the former Pepe'ekeo Sugar Mill, approximately ¼ mile east (makai) of Māmalahoa Highway and Pepe'ekeo Town, Makahanaloa, South Hilo, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting to legitimize the sale of stockpiled topsoil on approximately 3.76-acre portion of a 776± acre parcel. There are many large mounds of topsoil in the area which were created when C. Brewer pumped (by pipe) the residual soil from the harvesting and processing of sugar cane. The process of stockpiling began in the 1970's. The applicant is requesting to legitimize the sales operation started by C. Brewer and its subsidiaries from approximately 1984-85.

The proposed use is not contrary to the objectives sought to be accomplished by the land use law and regulations. The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case

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of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The topsoil was stockpiled there to comply with the environmental regulations for sugar cane companies and the discharge of soil from their washing of the sugar cane. The stockpiled topsoil is located on an area whose soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and "Prime Agricultural Land" by the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The applicant proposes to continue to sell this topsoil situated upon a 3.76-acre portion of the subject property. The parcel is 776± acres in size, and the removal of the stockpiled topsoil would allow for future agricultural use of the project site.

Lands within agricultural districts might not always be best suited for agricultural activities and yet classified as such. Also, there are certain types of uses which may not be agricultural in nature, yet reasonable in such districts. As such, the legislature has provided for the Special Permit process to allow for certain unusual and reasonable uses within the Agricultural district. The subject parcel is designated Agricultural, Urban and Conservation by the State and zoned Agricultural (A-20a), Single Family Residential (RS-7.5 & RS-10), Village Commercial (CV-10), Limited Industrial (ML-20) and General Industrial (MG-5a) by the County. However, the project site is designated Agricultural by the State and is situated within the County's Agricultural (A-20a) zoned district. The topsoil operation is situated on a 3.76-acre portion of a larger 776± acre parcel and would not significantly affect the agricultural resources or potential of the area nor significantly displace any active agricultural activity. Therefore, based on the above circumstances, approval of the request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions.

The request is not contrary to the General Plan. The subject request is not contrary to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates the project site as Extensive Agricultural/Intensive Agricultural. Lands immediately surrounding the project site are in pasture use for cattle. After all of the topsoil is removed and the land returned to its original state and elevation, agricultural use such a row cropping or pasture, will be established. A condition of approval is included to require re-vegetation and grading of the project site upon termination. The project would also complement the following goals and policies of the General Plan:

Land Use - Industrial Element:

Industrial activities may be located close to raw material or key resources. The ability of the subject property to provide the needed raw material vital to the construction industry while able to absorb the noxious nature of quarries speaks to the appropriateness of the area for such uses.

Economic:

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

Natural Resources:

Ensure that alterations to existing land forms and vegetation, except crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, salutation, or failure in the event of earthquake.

The County of Hawaii should require users of natural resources to conduct their activities in a manner that avoids or minimizes adverse impacts on the environment.

The desired use will not adversely affect the surrounding properties. Properties surrounding the subject parcel include Single Family Residential (RS-10) and Agricultural (A-20a) along Māmalahoa Highway, and Agricultural (A-20a) to the north and Agricultural (A-5a) to the south. The nearest dwelling is located approximately 2,000 feet away in the Pepe`ekee Subdivision, southwest of the project site.

There will be minimal impact of the operation to residents in the area. The project site consists of 3.76 acres within a 776± acre parcel. The applicant has stated that they will operate only on Wednesdays and Saturdays, from 7:00 a.m. to 3:30 p.m. The applicant anticipates an average of 10–15 truckloads of topsoil will be transported out via the private road per day. Dust will be mitigated by a portable water tank being situated at the site. Noise will be minimized by installing all equipment with standard mufflers. The Department of Public Works requires that if silt runoff is anticipated, adequate provisions should be installed to ensure the silt does not reach any ditch, water course or drainage facility. The applicant will be required to adhere to all governmental requirements, including the Department of Public Works and the Department of Health. In addition, the applicant has stated that public access to and along the shoreline will not be obstructed. Finally, no negative community comments were received during the years of operation or upon submittal of this application.

The land upon which the proposed use is sought is suited for the uses permitted within the district; however, this use will not interfere with existing uses. The land is rated "C" or "Fair" and "Prime Agricultural Land" by the ALISH Map. As previously stated, when the stockpiled topsoil is removed and the original elevation attained, the

ground will be restored to its natural state by grubbing the area and contouring to a non-hazardous condition to provide for future agricultural uses.

The use will not substantially alter or change the essential character of the land and the present use. This operation will occur on a 3.76-acre portion of the subject property. However, the project site has not been productive and has been vacant of activity since C. Brewer began this stockpiling in the 1970's. Therefore, although agricultural land has been removed, it is not anticipated that significant lands would be affected by this operation.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. There are many areas in the County where lands within the Agricultural District are not in active agricultural productivity. The sale of stockpiled topsoil in this vicinity has been ongoing for years as part of the sugar plantation operation. Through the special permit process, appropriate review of criteria is conducted for considering the granting of this request to continue this use. No existing or proposed areas for agricultural activities will be curtailed or diminished as a result of allowing the use within this portion of the subject property. Finally, the applicant has submitted a metes and bounds description of the area to be utilized.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Access to the project site is from Māmalahoa Highway onto the private road. This paved 32-foot wide road leads down to the mill site. A right turn at the intersection of the railroad right-of-way/HCCPC Mill Road leads onto the 16-foot wide gravel railroad right-of-way. Approximately .5 of a mile south, a driveway leads off to the project site on the makai side and then loops around to again connect up to the railroad right-of-way. A 1,500 gallon portable water tank will be situated at the site to provide for dust control. No other essential utilities and services are required.

The project site is not a habitat for endangered species of flora or fauna nor are archaeological resources at risk. As the project site has been previously used for the cultivation of sugar cane, there are no flora, fauna or archaeological resources that are at risk. Although two of the four public accesses to the shoreline utilizes portions of the old railroad right-of-way, both accesses are located approximately 1,800 feet away from the project site. Finally, there is no evidence of valued cultural, historical or native resources nor are any traditional and customary native Hawaiian rights being practiced in the area.

Based on the above considerations, the request to legitimize the sale of stockpiled topsoil is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

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

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. The operation shall be conducted in substantial conformance with representations made in the application.
3. The hours of operation shall be limited from 7:00 a.m. to 3:30 p.m. on Wednesdays and Saturdays.
4. The operation shall not obstruct public access to and along the shoreline.
5. Adequate dust control mitigation measures shall be implemented for the duration of the operation in accordance with Department of Health requirements. An adequate supply of water shall be made available for dust control.
6. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for this use, including the Department of Health and the Department of Public Works, Engineering Division.
7. The applicant shall submit an annual status report regarding the operation, in writing, to the Planning Director.
8. Upon termination of the operation, the land shall be graded and agricultural use or vegetation to blend with the surrounding areas shall be established. On-site drainage improvements, if required, will be designed and implemented to County Department of Public Works design and standards. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within ninety (90) days from the termination date.
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 an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

Mr. Reynolds Henderson

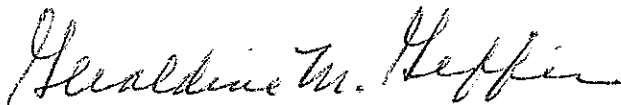
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10. An extension of time for the performance of conditions within the permit, may be granted by the Planning Director upon the following circumstances:
 - a) the nonperformance is the result of conditions that could not have been foreseen or are beyond 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; and
 - d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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

Lcardoza01PC

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