



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

AUG 20 2015

Thomas L. H. Yeh, Esq.
Law Offices of Yeh & Moore
85 W. Lanikāula Street
Hilo, HI 96720

Dear Mr. Yeh:

SUBJECT: Special Permit (SPP 04-000005)
Applicant: BWA LLC dba Botanical World Adventures
Request: Amendment for Time Extension to Construct Visitor's Center,
Parking Lot, and Related Improvements and To Extend the
Hours of Operation
Tax Map Key: 3-1-001:015

The Windward Planning Commission, at its duly held public hearing on August 6, 2015, voted to approve the above-referenced request to amend Special Permit No. SPP-04-000005 for a 5-year extension of time to Condition No. 2 (complete construction) and the expansion of operating hours (Condition No. 3). The project site is part of the existing Botanical World Adventures situated on the north side of Leopolino Road between Highway 19 and the Old Māmalahoa Highway, Kamae'e, North Hilo, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. Construction of the proposed development shall be completed within five years from the effective date of this amended permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access, and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

3. The hours of operation shall be limited to 7:00 a.m. to dusk/sunset daily, including weekends.
4. The total square footage of the visitor center shall not exceed 7,000 square feet. The parking area shall not exceed 20,000 square feet.
5. All parking areas shall be on site.
6. The applicant shall construct any improvements to the Highway 19 and Leopolino Road intersection required by the Department of Transportation or Planning Director including improvements necessary to improve the sight distance. The Planning Director may require the applicant to submit an updated TIAR when the visitor count exceeds twice the most recent number of visitors (80 per day). The Planning Director, in consultation with the Department of Transportation, may require further intersection improvements commensurate with the volume of traffic.
7. A drainage study of the property, if required, shall be prepared by the applicant and submitted to the Department of Public Works for review and approval, prior to submittal of plans for Plan Approval review. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
8. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations, or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. The applicant shall follow the Weed Risk Assessment referred to in the Division of Forestry and Wildlife's March 10, 2004 memorandum.

12. Comply with all applicable rules, regulations, and requirements of the affected agencies, including the Department of Public Works, Department of Transportation, and Department of Land and Natural Resources Division of Forestry and Wildlife, for the development of the subject property.
13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the original permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being satisfied. In order to enable the Planning Director to monitor whether intersection improvements may be necessary pursuant to Condition No. 6, the annual report shall include a count of (1) the total number of visitors, and (2) the number of large tours buses.
14. If the applicant should require an additional extension of time, the applicant shall submit their request to the Planning Commission for appropriate action.

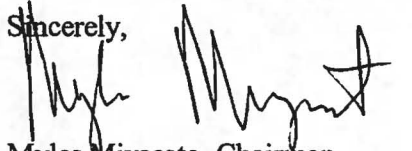
[Note: Ramseyer version available upon request.]

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

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Myles Miyasato, Chairman
Windward Planning Commission

LBWAbotanicalworldadventuresamendSPP04-005wpc
Enclosure: PC Findings Report

cc w/enclosures: BWA LLC dba Botanical World Adventures
 Department of Public Works
 Department of Water Supply
 County Real Property Tax Division - Hilo
 Department of Environmental Management
 Department of Land & Natural Resources - HPD
 State Land Use Commission
 DOT Highways, Honolulu
 /Mr. Gilbert Bailado

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

BWA LLC DBA BOTANICAL WORLD ADVENTURES
AMENDMENT TO SPECIAL PERMIT NO. 04-005

BWA LLC DBA BOTANICAL WORLD ADVENTURES is requesting a 5-year extension of time to Condition No. 2 (complete construction) and the extension of operating hours (Condition No. 3) of Special Permit No. 04-005, which allowed for the construction of a visitor center, parking lot and related improvements on approximately 154,010 square feet (3.53 acres) of land situated within the State Land Use Agricultural District. The project site is part of the existing Botanical World Adventures situated on the north side of Leopolino Road between Highway 19 and the Old Māmalahoa Highway, Kamae'e, North Hilo, Hawai'i, TMK: 3-1-001: portion of 015.

The applicant has submitted a request for a five-year extension of time to comply with Condition No. 2 (time to complete construction) of Special Permit No. 04-005. The condition currently states, "Construction of the proposed development shall be completed within five years from the effective date (June 8, 2005) of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access, and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements)."

In addition, the applicant is requesting an amendment to Condition No. 3 (hours of operation) to extend the hours of operation to begin at 7:00 a.m. and end at dusk/sunset daily, including weekends. The condition currently states, "The hours of operation shall be limited to 9:00 a.m. to 5:00 p.m. daily, including weekends."

Special Permit No. 04-005 was initially approved on June 5, 2005 to World Botanical Gardens to allow the construction of a visitor's center, parking lot, and related improvements on approximately 3.53 acres of land. On May 19, 2010, the Planning Director granted a 5-year extension of time until June 8, 2015 to complete construction of the project in compliance with Condition No. 2. On October 1, 2013, the applicant acquired the assets of the previous applicant, World Botanical Gardens Inc.

The applicant seeks an additional extension of time until June 8, 2020 to comply with Condition No. 2 due to:

- Years of litigation to seize control over the board of the original applicant; and
- Economic decline beginning in 2008 which suppressed the visitor market.

Additionally, the applicant is requesting an extension to the hours of operation to allow flexibility in its program offerings by providing visitors with the opportunity to come earlier and stay later to take advantage of different program offerings (i.e. zip line operations, botanical garden tour or visits tours, Segway tours, etc.) and to obtain refreshments during those earlier and later hours. In addition, as part of the desired visitor's center operation, the applicant sees a need which may exist for area residents and passersby to stop and obtain coffee, drinks, snacks or other refreshments.

Granting of the construction time extension and operating hour requests would not be contrary to the original reasons for the granting of the permit. The use would continue to be 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. No complaints were formally received relative to the requested time extension and operating hour change. As stated in the original permit, the proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection.

Approval of the requests would not be contrary to the General Plan or the Zoning Code. Since the administrative extension of time to the Special Permit was approved in 2010, all land use designations have remained the same. The State Land Use designation is Agricultural, County zoning for the property is A-20a, and the GP LUPAG map is Important Agricultural Lands.

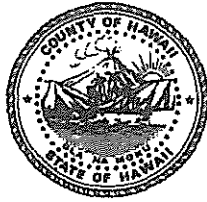
The amendment to Conditions No. 2 and No. 3 would not be contrary to the General Plan or the Zoning Code. Although a small portion of the property will be used for the proposed development, the majority of the 26.27-acre parcel will remain in its current state. The proposed request will continue to encourage agricultural activities or the utilization of lands in a manner consistent with the Important Agricultural Lands designation by the General Plan LUPAG Map. Finally, the proposed request would complement and be consistent with the Land Use and Economic elements of the General Plan.

The applicant does not anticipate the proposed extension of operating hours to create additional noise or visual impacts to any appreciable degree. In addition, the applicant does not expect that a change in hours of operation will significantly increase traffic impacts to Highway 19 or Leopolino Road to levels that will trigger the requirement of a TIAR update or any roadway improvements.

The Department of Transportation (DOT) commented that they had no objections to the request for the extension of time, but did have some concern over the expansion of operating hours, given the age of the traffic assessment (TIAR) and likely changes in traffic conditions. However, DOT deferred an update of the assessment at this time but reserved the right to request, at its sole discretion, an updated traffic assessment in the event the expanded operating hours generate traffic issues attributable to the World Botanical Gardens activities and such issues shall be mitigated by BWA at no cost to the DOT. They also clarified that the above determination was in addition to the existing permit condition that BWA update the Phillip Rowell and Associates Traffic Assessment dated January 21, 2005, when the visitor counts exceed twice the "existing" counts of 80 per day. DOT further stated that BWA shall provide appropriate and timely improvements as may be recommended in the updated traffic assessment at no cost to the DOT (as required in Condition No. 6 below).

In response to this amendment request, the DOT required the applicant to provide street lighting at the intersection of Hawai'i Belt Road and Leopolino Road, should the proposed extended operating hours be approved. The applicant's representative met with DOT staff and informed them that they would not be operating during the night but would be closing at dusk/sunset. DOT informed the applicant's representative that a street light would not be required at this time. This was confirmed by the Planning Department staff with DOT officials.

Based on the above considerations, the amendments to Condition No. 2 for a 5-year time extension to complete construction and the increase in operating hours for Condition No. 3 are approved.



County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JUN 8 2005

Sherrill Erickson, Esq.
82 Ponahawai Street
Hilo, HI 96720

Dear Ms. Erickson:

Special Permit Application (SPP 04-005)
Applicant: World Botanical Gardens, Inc.
Request: Establish a Visitor Center, Parking & Related Improvements
Within the SLU Agricultural District
Tax Map Key: 3-1-1:portion 15

Attached is a certified copy of the Planning Commission's Findings of Fact, Conclusions of Law and Decision and Order regarding the approval of the above Special Permit Application.

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

Sincerely,

Fred Galdones, Chairman
Planning Commission
Att.

cc w/att: Mr. Walter Wagner
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD/Kona
Rodney Haraga, Director/DOT-Highways, Honolulu

JUN 8 2005

PLANNING COMMISSION OF THE COUNTY OF HAWAII

STATE OF HAWAII

I hereby certify that this is a true copy from the
Records of the Planning Commission, County of
Hawaii

Shawn M. Nomura
Custodian of Records, Planning Commission
County of Hawaii

Date: JUN 8 2005

Application of WORLD BOTANICAL
GARDENS, INC. for a special permit on a
parcel situated at Kamaee, North Hilo,
Hawai'i, TMK: 3-1-1:Portion of 15.

SPP 04-005

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

Hearing Dates: June 4, 2004, July 2, 2004,
and May 12, 2005

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

I. FINDINGS OF FACT

1. **WORLD BOTANICAL GARDENS, INC.** (hereinafter, "Applicant") submitted an application for a Special Permit to construct a visitor center, parking lot and related improvements on approximately 154,010 square feet (3.53 acres) of land situated in the State Land Use Agricultural District. The site is part of the existing World Botanical Gardens situated on the north side of Leopolino Road between Highway 19 and the Old Mamalahoa Highway in Kamaee, North Hilo, Hawaii, TMK: 3-1-1: Por. 15.

2. **Background and Request:** In 1995, World Botanical Gardens opened for tourism a botanical garden that encompassed the site as well as adjacent lands totaling approximately 300 acres. Currently, visitors obtain information and maps, small souvenirs and canned juices at a 200-square foot wood frame shed constructed in 1996. The existing parking area consists of approximately 4,500-square feet of hard packed, well-drained gravel capable of accommodating up to 20 cars at a time.

3. The applicant proposes to construct a visitor center, parking lot and related improvements on a portion of a 26.27-acre property. The 7,000-square foot two-story air conditioned visitor center and 20,000-square foot parking lot will encompass approximately 3.5 acres within the 26.27-acre property. The actual building site proposed will be approximately 4,000 square feet, with 20,000 square feet for the parking lot. See, Exhibit "A" and exhibits 9 and 10 thereto (**Exhibit references herein are to exhibits to the Background Report on record**). The visitor center will provide education and orientation, as well as generate revenue for the World Botanical Gardens through sales of fresh fruit smoothies, health beverages, supplements and other food items. Maps and literature, retail nursery items, memorabilia, gifts, and sundries will be available for purchase at the visitor center.

4. The short term goal of the applicant is to increase its visitor count from current levels of approximately 80 visitors each day (40 cars) to approximately 150 visitors daily. The construction of the visitor center and associated improvements will allow tour buses on the site.

The applicant estimates approximately 5 tour buses of 50 visitors each per day on the site. In the long term, an average of 1,200 visitors will be accommodated on the site.

5. Currently, there are 3 full time and 2 part-time employees. After construction of the visitor center, it is estimated that a total of 12 employees will be hired. Current hours of operation are 9 a.m. to 5 p.m. daily, including weekends. These hours will remain the same after construction of the visitor center. World Botanical Gardens Inc. is the landowner of the property. (See **Exhibit A - Special Permit application**)

6. **STATE AND COUNTY PLANS:**

A. **State Land Use District:** Agricultural.

B. **GP LUPAG Map:** Intensive Agricultural.

C. **County Zoning:** Agricultural 20-acres (A-20a).

D. **Chapter 205A, HRS, Coastal Zone Management Program:** The entire state of Hawaii lies within the Coastal Zone Management Area. The intent of the Coastal Zone Management Program is to guide and regulate public and private uses in the coastal zone management area with respect to recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, and beach protection.

E. **Special Management Area (SMA):** The Special Management Area is a part of the Coastal Zone Management Program and regulated by the County. A small portion of the property not part of the project area is located within the Special Management Area.

7. **DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA**

A. **Subject Property:** The property is the site of the existing World Botanical Gardens, which opened in 1995. The site is an approximately 26.27-acre property located in the Umauma area approximately 16 miles from Hilo. Umauma Falls is located near the northern border of the project site. There is a 200-square foot wood frame shed or shelter constructed in 1996 (which has not yet received final inspection per Building Permit records) on the property. There are also two "porta-potties" on the site. The Old Government Road runs along the mauka boundary of the property, and Leopolino Road borders the property to its south/southeastern boundary.

B. **Surrounding Zoning/Land Uses:** Surrounding properties are zoned A-20a and are fallow and abandoned cane fields, pasture, or cultivated diversified agricultural crops such as ginger or sweet potato. According to the applicant, there is a dwelling near the property. Building Permit records indicate that a permit for an "efficiency dwelling" and storage building were opened in 2003 and 2002 respectively,

on parcel 30 across from Hanapueo Stream, and both permits have not been closed. TMK: 3-1-1: 20 mauka of the site owned by Mauna Kea Agribusiness, is currently being used as part of the World Botanical Gardens. The site plan for parcel 20 which is not a part of this request but nevertheless part of World Botanical Gardens, includes a Rain Forest Nature Trail, various species of plants, fruit, nut and spice orchard, a wedding grove, and Umauma Falls.

C. **USDA Soil Type:** HoC, Hilo silty clay loam 0 - 10% slopes. The Hilo series consists of well-drained silty clay loams. The surface layer is dark brown silty clay loam about 12 inches thick. The surface layer is very strongly acidic, and the subsoil is strongly acid to medium acid. Runoff is medium and the erosion hazard is slight to moderate.

D. **ALISH:** Prime Agricultural Land, which has the soil quality, growing season, and moisture needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods.

E. **Land Study Bureau's Detailed Land Classification System:** "C" or "Fair" and "E" or "Very Poor" along the northern portion of the property bordering Hanapueo Stream.

F. **FIRM:** Zone "X", area determined to be outside the 500-year flood plain.

G. **Flora/Fauna Resources:** The property consists of former sugarcane land that was intensively cultivated in sugarcane. According to the applicant, the flora on the property prior to purchase by World Garden consisted of sugarcane, invasive grasses and noxious weeds. The applicant has controlled weeds and grasses and planted approximately 500 botanical specimens of plants and trees on the property. The applicant plans to plant 30,000 botanical specimens. The Department of Land and Natural Resources Division of Forestry and Wildlife has recommended that the applicant follow the weed risk assessment contained in their website. Common species of birds in the area include the Northern Mockingbird (*Mimus polyglottos*), Northern Cardinal (*Cardinalis cardinalis*), Common Myna (*Acridotheres tristis*), House Finch (*Carpodacus mexicanus*), House Sparrow (*Passer domesticus*), Spotted Dove (*Streptopella chinensis*), Zebra Dove (*Geopelia striata*), and the Rock dove (*Columba livia*). The I'o is very rarely seen soaring overhead in the area.

H. **Archaeological/Historical Resources:** By memo dated January 13, 2004, the State Department of Land and Natural Resources Historic Preservation Division has indicated that they believe "there are no historic properties present because intensive cultivation has altered the land, and no historic properties will be affected by this undertaking." According to the applicant, because the property consists of former sugarcane land that was completely and intensively cultivated for nearly a century, there are no observable or otherwise known archaeological resources on or associated with the property.

I. **Cultural Resources:** According to the applicant, there is no evidence of valued cultural, historical or native resources nor evidence of any traditional and customary Native Hawaiian rights being practiced on the property.

J. **Public Access:** There is no record of a designated public access to the shoreline or mountain areas traversing the property.

K. **Traffic:** The applicant does not believe that the proposed development will create an increase in traffic on Highway 19 as visitors to the site will be the same visitors who visit Akaka Falls. According to the applicant, tour buses will be well prepared in advance to decelerate and negotiate the exit off of Highway 19 onto Leopolino Road and onto the site.

In a letter dated June 2, 2004, the Department of Transportation recommended that the applicant prepare a Traffic Impact Analysis Report (TIAR) addressing the following:

- an evaluation of intersection improvements at Leopolino Road and Hawaii Belt Road (Route 19) to include, but not be limited to, acceleration lanes, deceleration lanes, storage lanes, and other safety improvements.
- an evaluation on how the full build-out (for 1,200 visitors) of the subject operation will impact the roadways in the area.

The Department of Transportation further recommends that the applicant be responsible for mitigating traffic impacts attributable to the proposed 1,200 daily visitors by providing the required roadway and intersection improvements whether as an interim, phase/incremental or permanent measures at the appropriate times matching the volume of business traffic during the growth of the applicant's operations.

8. **PUBLIC UTILITIES AND SERVICES**

A. **Access:** Access to the project site is from Highway 19, travelling approximately 100 yards along Leopolino Road, a 21-foot wide, paved, single-lane roadway, and connecting onto the Old Government Road, a 14-foot wide paved single-lane County road. Applicant's representatives testified that the County has maintained Leopolino Road in recent years. The entrance to the site is approximately 100 yards from the road. There is a packed gravel parking area on the site adjacent to the shelter. After the construction of the visitor center, access is proposed directly off Leopolino Road onto a 30-foot wide paved driveway designated as "Palm Avenue", a former cane haul road lined with 50 palms approximately 40 feet tall. Visitors will exit the site by looping mauka within the site onto the Old Government Road.

The Police Department recommends accesses only from Leopolino Road, instead of Old Government Road to Kauniho Road to Highway 19 (from the site), due to the speed of eastbound traffic on Highway 19 at the intersection with Kauniho Road. In addition, the Police Department has indicated that the Old Government Road from the site heading north is too narrow for two-way traffic.

B. **Water:** According to the applicant, water is available from a catchment system and stored in two 30,000 gallon metal tanks. The Department of Water Supply has stated that County water is not available to the site.

C. **Sewage:** According to the applicant, a septic system will be constructed, meeting State and County requirements.

D. **Other Essential Utilities/Services:** All utilities are available to the site.

9. **AGENCIES' COMMENTS**

A. **Department of Public Works:** See Exhibit B - April 1, 2004 Memo

B. **Department of Environmental Management:** See Exhibit C – March 4, 2004 Memo

C. **Department of Water Supply:** See Exhibit D - April 12, 2004 Memo

D. **Police Department:** See Exhibit E - March 18, 2004 Memo

E. **Fire Department:** See Exhibit F - March 24, 2004 Memo

F. **Department of Land and Natural Resources Historic Preservation Division:** See Exhibit G - January 13, 2004 Memo

G. **Department of Land and Natural Resources Land Division:** See Exhibit H - April 7, 2004 Letter and Applicant's Response Letter dated April 26, 2004

H. **Department of Health:** See Exhibit I - March 23, 2004 Memo

I. **Land Use Commission:** See Exhibit J - March 9, 2004 and April 22, 2004 Letters and Applicant's Letter dated April 12, 2004

J. **Department of Transportation:** See Exhibit K - June 2, 2004 Letter

10. **AGENCIES - NO COMMENTS**

A. **Civil Defense Agency**

11. **AGENCIES - NO RESPONSE**

A. **Natural Resources Conservation Service**

12. **PUBLIC COMMENTS.** The Planning Commission received the following written public comments: Cory Harden, Richard and Virginia Alderson, Brent Gallagher and Jeff and Wendy Haun. At the public hearings on the application, the Planning Commission received public testimony from the following persons: Richard Alderson, Jeff and Wendy Haun, Mya Pawu, and George Leonard.

13. The Planning Commission held public hearings on the application on June 4, 2004, July 2, 2004, and May 12, 2005, after applicant gave written notice to surrounding landowners as required by law.

14. No formal petitions for intervention in a contested case were filed pursuant to the Planning Commission Rule 4.

15. At the July 2, 2004 public hearing on the Application, and by way of letter dated June 28, 2004, Ms. Wendy Haun gave public testimony opining that she and her husband, Jeff, owned property (TMK: 3-1-1:46) across the Hawaii Belt Highway from the site, and that their access easement was within 500 feet of the proposed special permit site. Ms. Haun therefore said she and her husband should have been given written notice of the hearing on the Application, but were not.

16. Staff reviewed the Planning Department's TMK Plat Map listed as Petitioner's Exhibit 9 and reported to the Commission that Jeff and Wendy Haun's property, and their access easement, were not within 500 feet of the proposed special permit site, and the Commission so finds.

II. **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Commission makes the following Conclusions of Law, including mixed conclusions of fact and 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 Application for Special Permit, with certain restrictions and limitations, meet the criteria set forth in paragraphs 1 and 2.

3. **The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.** The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

4. The proposed facility will be directly accessory to and in support of the existing botanical garden, which is a permissible agricultural use in the state land use agricultural district. The proposed facility will occupy approximately 3.5 acres of a parcel approximately 26.27-acres in size. The applicant proposes to construct a visitor center, parking lot and related improvements on a portion of a 26.27-acre property. The 7,000-square foot two-story air conditioned visitor center and 20,000-square foot parking lot will encompass approximately 3.5 acres within the 26.27-acre property. The actual building site proposed will be approximately 4,000 square feet, with 20,000 square feet for the parking lot. The visitor center will provide education and orientation, as well as generate revenue for the World Botanical Gardens through sales of fresh fruit smoothies, health beverages, supplements and other food items. Maps and literature, retail nursery items, memorabilia, gifts, and sundries will be available for purchase at the visitor center. The short term goal of the applicant is to increase its visitor count from current levels of approximately 80 visitors each day (40 cars) to approximately 150 visitors daily. The construction of the visitor center and associated improvements will allow tour buses

on the site. The applicant estimates approximately 5 tour buses of 50 visitors each per day on the site. In the long term, an average of 1,200 visitors will be accommodated on the site. Currently, there are three full time and two part-time employees. After construction of the visitor center, it is estimated that a total of 12 employees will be hired. Current hours of operation are 9 a.m. to 5 p.m. daily, including weekends. These hours will continue to be in effect after construction of the visitor center.

5. The desired use will not adversely affect the surrounding properties.

Surrounding properties are zoned Agricultural (A-20a) and are fallow and abandoned cane fields, pasture, or cultivated diversified agricultural crops such as ginger or sweet potato. The closest dwelling is located across the Hanapueo Stream to the northwest. In addition, according to the applicant, a portion of the adjacent property mauka of the site is used for the botanical garden. The World Botanical Garden has been in operation since 1995, and there are no complaints regarding the operation of the business on the site. The proposed visitor center will occupy a small portion of the site, and the view plane from the highway will not be affected. The generator will emit some minimal noise only when in operation.

6. The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection.

Access to the project site is from Highway 19 to Leopolino Road, a 21-foot wide, paved, single-lane roadway to the Old Government Road, a 14-foot wide paved single-lane County road. The ownership of Leopolino Road is uncertain, but the County has been maintaining it. The entrance to the site is approximately 100 yards from the road. There is a packed gravel parking area on the site adjacent to the shelter. After the construction of the visitor center, access is proposed from Leopolino Road onto a 30-foot wide paved driveway designated as "Palm Avenue", a former cane haul road lined with 50 palms approximately 40 feet tall. Visitors will exit the site by looping mauka within the site onto the Old Government Road

7. The Police Department recommends accesses only from Leopolino Road, instead of Old Government Road to Kauniho Road to Highway 19 (from the site), due to the speed of eastbound traffic on Highway 19 at the intersection with Kauniho Road. In addition, the Police Department has indicated that the Old Government Road from the site heading north is too narrow for two-way traffic.

8. Tour buses will be well prepared in advance to decelerate and negotiate the exit from Highway 19 onto Leopolino Road and onto the site. In a letter dated June 2, 2004, the Department of Transportation recommends that the applicant prepare a Traffic Impact Analysis Report (TIAR) addressing the following:

- an evaluation of intersection improvements at Leopolino Road and Hawaii Belt Road (Route 19) to include, but not be limited to, acceleration lanes, deceleration lanes, storage lanes, and other safety improvements.

- an evaluation on how the full build-out (for 1,200 visitors) of the subject operation will impact the roadways in the area.

The Department of Transportation further recommends that the applicant be responsible for mitigating traffic impacts attributable to the proposed 1,200 daily visitors by providing the required roadway and intersection improvements whether as an interim, phase/incremental or permanent measures at the appropriate times matching the volume of business traffic during the growth of the applicant's operations.

9. As a condition of approval, should the Department of Transportation require any improvements to Highway 19 and Leopolino Road as a result of information contained in the TIAR, the applicant will be required to construct any improvements to the Highway 19 and Leopolino Road intersection. The proposed condition will further require the applicant to submit an updated TIAR when the visitor count exceeds twice the most recent number of visitors. The Planning Director, in consultation with the Department of Transportation, may require further intersection improvements commensurate with the volume of traffic.

10. Electrical and telephone services are available to the site. A septic system will be constructed, meeting State and County requirements.

11. **Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.** The complete demise of the long established sugar industry that dominated agricultural activity for nearly a century has resulted in new trends and conditions, including diversified agriculture and agricultural tourism. The proposed visitor center will be located within the existing World Botanical Gardens, which has attracted visitors to the site for nearly eight years.

12. **The use will not substantially alter or change the essential character of the land and the present use.** Although the visitor center will be a new structure on the property, the center will utilize approximately 4,000 square feet of the 26.27-acre property. Thus, the proposed use will not substantially alter the essential character of the land. According to the applicant, there is no record of a designated public access to the shoreline or mountain areas traversing the property. Further, there is no evidence of valued cultural, historical or native resources, nor evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

13. The property is zoned Agricultural 20-acres (A-20a) and falls within the State Land Use designation of Agricultural. As such, a Special Permit is necessary to establish the proposed use, to allow for uses other than agricultural uses on the subject property. The property is currently the site of the World Botanical Gardens, with over 500 species of plants, with plans to plant 30,000 species. The applicant's goal is to create a world class botanical garden. Therefore, although a small portion of the property will be used to construct the visitor center and parking, agricultural uses will expand upon construction of the center.

14. Agricultural activities will not be diminished, as the portion of the site proposed for the development is not in active agricultural use. As the proposed facility will occupy approximately 4,000 square feet of a 26.27-acre parcel, the proposed use will not remove significant lands from agricultural use and would not be contrary to the objectives of the State Land Use Law for the Agricultural District. The property is designated as Prime Agricultural Lands by the ALISH map. These are lands which have the soil quality, growing season, and moisture needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods. The Land Study Bureau's Overall Master Productivity soil rating for the property is "C" or "Fair", and suited for use as a botanical garden. The proposed use will complement, and not interfere with uses permitted in the district, as a botanical garden is a permitted use within the Agricultural zoned district.

15. **The proposed use is consistent with the goals, policies and standards of the General Plan.** The General Plan LUPAG Map designation for the property is Intensive Agriculture, which includes sugar, orchard, diversified agriculture, and floriculture. Although a small portion of the property will be used for the proposed development, the majority of the 26.27-acre parcel will remain in its current state. The proposed request will continue to encourage agricultural activities or the utilization of lands in a manner consistent with the Intensive Agriculture designation by the General Plan LUPAG Map. Finally, the proposed request would complement and be consistent with the Land Use and Economic elements of the General Plan.

16. **The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program.** The project site is not located in the Special Management Area. The site is located mauka of Highway 19 and will not be impacted by coastal hazard and beach erosion. There is no record of a designated public access that traverses the property. According to the applicant, no valued cultural, historical or natural resources exist on the properties and there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area. The proposed project will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

17. The property consists of former sugar cane land that was intensively cultivated in sugar cane. According to the applicant, the flora on the property prior to purchase by World Garden consisted of sugar cane, invasive grasses and noxious weeds. The applicant has controlled weeds and grasses and planted approximately 500 botanical specimens of plants and trees on the property. The applicant plans to plant 30,000 botanical specimens. The Department of Land and Natural Resources Division of Forestry and Wildlife has recommended that the applicant follow the weed risk assessment contained in their website. Common species of birds in the area include the Northern Mockingbird (*Mimus polyglottos*), Northern Cardinal (*Cardinalis cardinalis*), Common Myna (*Acridotheres tristis*), House Finch (*Carpodacus mexicanus*), House Sparrow (*Passer domesticus*), Spotted Dove (*Streptopella chinensis*), Zebra Dove (*Geopelia striata*), and the Rock dove (*Columba livia*). The I'o is very rarely seen soaring overhead in the area.

18. By memo dated January 13, 2004 the State Department of Land and Natural Resources Historic Preservation Division has indicated that they believe "there are no historic properties present because intensive cultivation has altered the land, and no historic properties will be affected by this undertaking." According to the applicant, because the property consists of former sugarcane land that was completely and intensively cultivated for nearly a century, there are no observable or otherwise known archaeological resources on or associated with the property.

19. In view of the recent Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the rezoning area: As the site was formerly cultivated in sugar cane, an archaeological inventory survey of the site was not conducted. By letter dated January 13, 2004, the DLNR-HPD has indicated that "we believe there are no historic properties present [because] intensive cultivation has altered the land. Thus, we believe that no historic properties will be affected by this undertaking." However, a condition will be included to require the applicant to notify the Planning Department if any unanticipated archaeological features or sites are discovered during the course of improving the site.

Possible adverse effect or impairment of valued resources: Native plants could be destroyed by construction and ground alteration. The subject property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: Conditions of approval will be included to require the applicant to notify the Department of Land and Natural Resources - Historic Preservation Division (DLNR-HPD) should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-HPD. The applicant has stated that since the property was intensively cultivated in sugarcane production for approximately 100 years, no traditional and customary native Hawaiian rights are exercised in the area. Thus, it is believed that the project would have no adverse impact relative to the cultural and historical resources of the area. To the extent to which traditional and customary Native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights.

20. Based on the above considerations, the request to construct a visitor center, parking lot and related uses would be an unusual and reasonable use of land within the State

Land Use Agricultural District, which would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

III. DECISION AND ORDER

The application for a Special Permit is hereby approved subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.

2. Construction of the proposed development shall be completed within five years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

3. The hours of operation shall be limited to 9:00 a.m. to 5:00 p.m. daily, including weekends.

4. The total square footage of the visitor center shall not exceed 7,000 square feet. The parking area shall not exceed 20,000 square feet.

5. All parking areas shall be on-site.

6. The applicant shall construct any improvements to the Highway 19 and Leopolino Road intersection required by the Department of Transportation or Planning Director including improvements necessary to improve the sight distance. The Planning Director may require the applicant to submit an updated TIAR when the visitor count exceeds twice the most recent number of visitors. The Planning Director, in consultation with the Department of Transportation, may require further intersection improvements commensurate with the volume of traffic.

7. A drainage study of the property, if required, shall be prepared by the applicant and submitted to the Department of Public Works for review and approval, prior to submittal of plans for Plan Approval review. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.

8. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.

9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.

10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

11. The applicant shall follow the Weed Risk Assessment referred to in the Division of Forestry and Wildlife's March 10, 2004 memorandum.

12. Comply with all applicable rules, regulations and requirements of the affected agencies, including the Department of Public Works, Department of Transportation, and Department of Land and Natural Resources Division of Forestry and Wildlife, for the development of the subject property.

13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being satisfied. In order to enable the Planning Director to monitor whether intersection improvements may be necessary pursuant to Condition No. 5, the annual report shall include a count of (1) the total number of visitors, and (2) the number of large tours buses.

14. An extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:

A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.

B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.

C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.

D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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

DATED: Hilo, Hawai'i, JUN 8 2005.

PLANNING COMMISSION
COUNTY OF HAWAI'I



Fred Galdones, Chairman

Exhibits
Are
Available
In
File