

## 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

April 15, 2005

Mr. Yarrow Smith and Ms. Martha Holman-Smith  
RR2, Box 4045  
Pahoa, HI 96778

Dear Mr. Smith and Ms. Holman-Smith:

Special Permit Application (SPP 04-020)  
Applicant: Yarrow Smith and Martha Holman-Smith  
Request: Operation of a Fruit Stand (Products Also From  
Other Than Property)  
Tax Map Key: 1-4-72:33

The Planning Commission at its duly held public hearing on April 1, 2005, voted to approve the above-referenced application. Special Permit No. 1258 is hereby issued to allow the operation of a fruit stand on 4.996 acres of land situated in the State Land Use Agricultural District. The property is located along the east side of the Kaimu-Kapoho Road (Highway 137), approximately 600 feet south of the Highway 137 and Kapoho Beach Lots Road intersection, Vacationland Hawaii Subdivision, Unit II, Kapoho, Puna, Hawaii.

Approval of this request is based on the following:

The applicants propose to operate a fruit stand on an approximately 4.996-acre parcel. There is a 30' by 60' warehouse (originally permitted as a Noni processing facility) on the site, which the applicants purchased with the intention of establishing a fruit and produce stand. The property has been cultivated with bananas, papayas, pineapples and vegetables. The applicants intend to use a portable stand or cart to sell the produce. There is a gravel parking area for loading and unloading, and a parking area. The remainder of the property not in agricultural use will remain undeveloped.

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. 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. 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. Soils on the property are classified as "E" or "Very Poor" and unclassified by the Agricultural Lands of Importance in the State of Hawaii (ALISH) map. The property is zoned Agricultural (A-1a). As only a portion of the 4.996-acre property will be used for the fruit stand, it is not anticipated that the proposed use will displace any agricultural activity nor diminish the agricultural potential of the area. Areas in agricultural uses will remain, and the balance of the property will be left undisturbed. The property is surrounded by a screen of natural vegetation. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The project site is not proximate to the shoreline and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Although there were no professional surveys conducted of the site, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the property, and the area has not been identified as a significant botanical or biological habitat. Presently, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of known valued cultural, historical or native resources in the area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

No commissioned archaeological inventory survey of the area was conducted. In a letter dated December 1, 2004, the applicants have requested a "no effect" letter from the State Department of Land and Natural Resources. The property is not known to be a habitat for any rare or endangered animal life and would not have any significant negative impact on floral or fauna resources in the area.

The desired use will not adversely affect surrounding properties. Surrounding properties are zoned A-1a and consist of vacant land, single-family dwellings and agricultural uses. Per building permit records, there are dwellings adjacent to the property on all sides except to the south. Seven lots to the south of the property along Kaimu-Kapoho Road (Highway 137) on TMK: 1-4-72: 28, Special Permit No. 1049 was

approved on March 17, 2000 for the establishment of a bed and breakfast operation, fruit stand and commercial kitchen. The subject property is approximately 4.996-acres in size and will not impact surrounding properties. Due to the limited nature of the proposed use, it is not anticipated that the use will adversely impact surrounding properties. As a condition of approval, the applicants will be required to provide landscaping to mitigate any potential adverse noise or visual impacts to adjacent properties. Hours of operation will be limited to 7:00 a.m. to 6:00 p.m. daily. These additional requirements should further minimize the possibility of adverse impacts to the surrounding area. No objections were received from the public as of this writing.

According to Building Records, Building Permit No. 990914 was opened on August 13, 1999 for the construction of a 30' x 60' metal storage building on the site, but did not receive final inspection. Building Permit No. 991499, which is also still open, was secured on December 13, 1999 to convert a portion of the storage building into a one-bath, two-sink area. On November 14, 2002, records indicate a change of ownership from Kapoho Noni Farm Inc./Hawaiian Herbal Supply to the current landowners. A condition of approval will be included to secure final inspection of all outstanding building permits prior to the issuance of a Certificate of Occupancy.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the site is from Kaimu-Kapoho Road (Highway 137), a County-owned and paved two-lane road with a pavement width of approximately 20 feet. County water is available to the site, and wastewater will be disposed via a cesspool. All other essential utilities and facilities are available to support the proposed 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. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may and have been established. The applicants have stated that a fruit stand would be convenient to neighbors, as the closest store is several miles from the site.

The request will conform to, among others, the Land Use and Economic elements of the General Plan and is not contrary to the goals, policies and standards of the General Plan. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is designated Extensive Agricultural Land. Soils on the property are classified as "E" or "Very Poor" for agricultural productivity and unclassified by the Agricultural Lands of Importance to the

State of Hawai'i (ALISH) Map. While the potential for intensive agricultural uses may exist, the soil conditions within the property and surrounding area may preclude such intensive agricultural activities from being conducted. The proposed use is also consistent with the Land Use and Economic elements of the General Plan. 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.

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 property has been improved with a warehouse, an archaeological inventory survey of the site was not conducted. The applicants have requested a "no effect" letter from the DLNR-HPD.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue. The applicants have stated that there are no rare or endangered floral or faunal species on the site, as the property has been improved with a warehouse.

Feasible actions to protect native Hawaiian rights: The applicants have stated that there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. Thus, the proposed use 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. Conditions of approval will be included to require the applicants to notify the DLNR-HPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-HPD.

Based on the above considerations, the approval of the request to operate a fruit stand (including produce from other properties) would support 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 Planning Director may initiate procedures to revoke this permit.

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of the proposed improvements shall be completed within five (5) 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 Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
3. The applicants shall secure final inspection for Building Permit Nos. 990914 and 991499 prior to receipt of a Certificate of Occupancy.
4. The facility shall not exceed the existing 1,800 square foot warehouse.
5. The hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. daily.
6. Any exterior signs shall meet with the approval of the Department of Public Works.
7. The driveway connection to Kaimu-Kapoho Road (Highway 137) shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
8. 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.
9. 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 -

State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.


10. Upon compliance with all conditions of approval and prior to the start of the operation, the applicant shall provide, in writing, a final status report to the Planning Director
11. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
12. An initial extension of time for the performance of conditions 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).

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.

Mr. Yarrow Smith and Ms. Martha Holman-Smith  
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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

*for* 

Fred Galdones, Chairman  
Planning Commission

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cc: 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