

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. Kenneth M. Verosko
84-4770 Mamalahoa Highway
Captain Cook, HI 96704

Dear Mr. Verosko:

Special Permit Application (SPP 04-022)

Applicant: Kenneth M. Verosko

Request: Establishment of a Smoothie Stand

Tax Map Key: 8-4-15:portion of 4

The Planning Commission at its duly held public hearing on March 18, 2005, voted to approve the above-referenced application. Special Permit No. 1253 is hereby issued to allow the establishment of a smoothie stand on a 0.5-acre area situated within the State Land Use Agricultural District. The area involved is a portion of the South Kona Fruit Stand and Nursery located along the east (mauka) side of Mamalahoa Highway (Highway 11) and approximately 1,200 feet south of the Mamalahoa Highway – City of Refuge Road junction, Keokea, South Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to add a smoothie stand operation to the existing South Kona Fruit Stand and Nursery business. According to the applicant, the proposed smoothie stand would be located 16 feet from the existing fruit stand, within another 600 square-foot (20' x 30') structure. The smoothie stand would include a kitchen, small serving area, outdoor seating area and a handicap accessible restroom.

The proposed request 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

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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-5a). It is not anticipated that the proposed use will displace any agricultural activity nor diminish the agricultural potential of the area since only a 0.5-acre portion of the 6.2-acre property will be used for the proposed smoothie stand and existing fruit stand business. The remainder of the property will continue in organic farming. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

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 area on the property where the proposed request would be located is designated as Orchards, which are agricultural lands though rocky in character and content support productive macadamia nuts, papaya, citrus and other similar agricultural products. Although the property is designated Orchards, 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 Hawaii (ALISH) Map. Only a small portion of the property will be used for the smoothie stand. The majority of the property will still be retained in agricultural use. 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.

The desired use will not adversely affect surrounding properties. The subject property and surrounding properties are situated within the State Land Use Agricultural District and County's Agricultural-5 acre zoned district. Surrounding properties include scattered residences, coffee and macadamia nut farms, fruit farms, pastures, and vacant lands. Directly across Highway 11 is the Keokea Coffee Farm. Special Permit No. 1160 was approved on June 7, 2002 to allow the establishment of a 1200-square foot coffee cafe including kitchen, reception area and restrooms for the Keokea Coffee Farm property. As of this date, the café has not been established. Kealia Ranch, owned by the McCandless Family, is located on the large parcels of land to the south and southwest. These lands are used mainly for grazing.

The proposed smoothie stand is located on a property that is approximately 6.20 acres in size and will not impact surrounding properties. Hours of operation will be limited to 9:00 a.m. to 6:00 p.m., Monday through Saturday. No letters of objections were received from the public as of this writing. Due to the limited nature of the proposed use, it is not anticipated that the use will adversely impact surrounding properties.

The proposed request 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 Mamalahoa Highway (Highway 11), which is a two-lane arterial with a right-of-way width of 50 feet. The road has a 26-foot pavement width and a partially graveled shoulder. There is an existing half-moon entry/exit cement driveway on the project site that has a width of 27 feet for the business. County water is available to the site, and wastewater will be disposed via a new septic system. 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. Agricultural tourism activities have become part of a growing movement in Hawaii that provide additional attractions to draw visitors to this island, and supplement the farmers' income to further perpetuate active agricultural uses. Such tourism activities are incidental on a working farm or agricultural processing facility for the enjoyment, education, and/or active involvement of the visitor. Such use is consistent with the social and physical character of a rural-agricultural area and will contribute to the economic development of the County.

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 10, 2004, the applicant has 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 proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. 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 dwelling, fruit stand and organic farm, an archaeological inventory survey of the site was not conducted. The applicant has 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 applicant believes that there will be little or no effect on floral or faunal resources, as the property has been improved with structures and an organic farm.

Feasible actions to protect native Hawaiian rights: The applicants have stated that the proposed development will have no effect on Hawaiian Cultural Resources. 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 establish a Smoothie stand 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 hours of operation shall be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday.
4. The driveway connection to Mamalahoa Highway (Highway 11) shall conform to the requirements of the Department of Transportation.
5. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage system, if required, shall be constructed meeting with the approval of the Department of Public Works and the Department of Transportation prior to the issuance of a Certificate of Occupancy.
6. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
7. 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.
8. 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.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

Mr. Kenneth M. Verosko

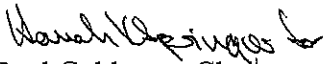
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10. Upon compliance with all conditions of approval, the applicant shall provide, in writing, a final status report to the Planning Director
11. An initial extension of time for the performance of conditions may be granted by the Planning Director 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.

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

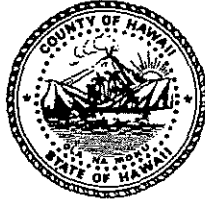
Sincerely,



Fred Galdones, Chairman
Planning Commission

Lverosko01pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD/Kona
Rodney Haraga, Director/DOT-Highways, Honolulu
Ms. Lori Mikkelson



County of Hawai'i

LEEWARD PLANNING COMMISSION

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APR 07 2011

Mr. Ken Verosko
84-4770 Māmalahoa Highway
Captain Cook, HI 96704

Dear Mr. Verosko:

Special Permit (SPP 1253)

Applicant: Ken Verosko dba South Kona Fruit Stand

Request: Amend SPP 1253 to Increase Hours of Operation, Number of Employees, and Allow Sale of Food and Non-Food Items, Including Products from Other Farms, and Increase Permit Area to 1.5 Acres

Tax Map Key: 8-4-015:004

The Leeward Planning Commission at its duly held public hearing on March 17, 2011, voted to approve the above-referenced request to amend Special Permit No. 1253, which allowed the establishment of a smoothie stand on a 0.5-acre portion of a larger 6.2-acre parcel of land situated within the State Land Use Agricultural District. The amendment request is to increase the days and hours of operation, increase the number of employees, allow the sale of food and non-food items including products from other farms, and enlarge the permit area to 1.5 acres. The project site is located along the east (mauka) side of Māmalahoa Highway – City of Refuge Road junction, Keōkea, South Kona, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting an amendment to Special Permit No. 1253, which allowed the establishment of a smoothie stand. Specifically the applicant is requesting the following amendments:

- Increase the days and hours of operation. Condition 3 of the current permit limits hours of operation to 9:00 a.m. to 6:00 p.m., Monday through Saturday. The applicant requests to operate daily from 7:00 a.m. to 7:00 p.m.
- Increase the number of employees from three to four, in addition to family members.
- Allow the preparation and sale of food items such as sandwiches, salads, soups, fish tacos, baked goods, chips, and non-alcoholic drinks.
- Allow the sale of produce from other farms in the area at the fruit/smoothie stand. Roadside stands that sell agricultural products grown on the premises are permitted in the State Land Use Agricultural district, but a special permit is required in order to sell agricultural products grown on other farms.
- Allow the sale of non-food items such as artisan soaps, T-shirts, mugs, local crafts and other souvenirs within the existing fruit/smoothie stand.
- Expand the permit area from 0.5 acre to 1.5 acres. The applicant would like to use a 900 square foot shade house structure as a seating area for the patrons of the fruit/smoothie stand. The structure can accommodate approximately 31 seats.

The 1.5-acre permit area includes an approximately 532-square foot fruit/smoothie stand building that includes a 280-square foot fruit/smoothie stand, 196-square foot kitchen, and 56-square foot restroom; a 900-square foot shade house structure; parking and driveway .

Approval of this request would not be contrary to the General Plan or the Zoning Code. The property is located on lands designated Agricultural by the State Land Use Commission and zoned Agricultural-5 acre (A-5a) by the County. 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 General Plan LUPAG map designation for the property has changed from Orchards to Important Agricultural Land since the original permit was granted. Orchards are agricultural lands that although rocky in character and content support productive macadamia nuts, papaya, citrus and other similar agricultural products. Although the property is designated as Important Agricultural Land in the

General Plan, soils on the property are classified as "E" or "Very Poor" for agricultural productivity and are classified as Other Important Agricultural Land by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Only a small portion of the property (1.5 acres) will be used for operation of the fruit/ smoothie stand business. The majority of the property will be retained in agricultural use. The proposed use is also consistent with the Land Use and Economic elements of the General Plan.

Since the original permit was granted, the Kona Community Development Plan was adopted in 2008 by the County Council. The subject property is located outside of the Kona Urban Area and is not located in any rural town transit-oriented development (TOD) areas, thus, there are no specific land use development strategies that pertain to the proposed project. However, the Economic Development element of the CDP indicates strong support for the agricultural industry. Specifically, Objective ECON-2 states that existing agriculturally-related endeavors should be enhanced and new endeavors should be encouraged. This objective will be fulfilled by allowing the existing smoothie stand business to continue to operate and expand its permit size, hours of operation, number of employees and goods offered.

Approval of this request would not be contrary to the original reasons for granting the Special Permit. The permit was originally granted to allow a smoothie stand operation in South Kona. The business has grown to a point where the applicant is now requesting to enlarge the permit area, increase the hours of operation and number of employees and offer a greater variety of foods and goods to patrons. The original reasons for granting the permit are still valid and the increase in operation is not expected to have any significant adverse effects. The applicant has complied with all of the conditions of the original permit, thus the Planning Director is recommending that the majority of conditions be removed with exception of a condition that continues to limit the hours of operation and a condition requiring that the applicant meet Department of Water Supply requirements for providing County water to the smoothie stand operation.

Based on the above, the request to amend Special Permit No. 1253 by increasing the days and hours of operation, increasing the number of employees, allowing the sale of food and non-food items including products from other farms, and enlarging the permit area to 1.5 acres is an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations or the original reasons for approving this permit. Approval of this request is subject to the following conditions. Material to be added is underscored; material to be deleted is bracketed and struck through.

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).]~~
2. The project shall be developed and operated in substantial compliance with the representations made by the applicant.
3. Within six (6) months from the effective date of this amended permit the applicant shall submit estimated maximum daily water usage calculations prepared by a licensed engineer to the Department of Water Supply. As directed by the Department of Water Supply, the applicant shall either limit County water usage for the proposed uses to an average of 400 gallons per day or install an additional or larger water meter. The applicant shall promptly install any improvements recommended by the Department of Water Supply.
- ~~[3.]~~4. The hours of operation shall be limited to [9:00 a.m. to 6:00 p.m. Monday through Saturday] 7:00 a.m. to 7:00 p.m. daily.
- ~~[4. The driveway connection to Mamalaha Highway (Highway 11) shall conform to the requirements of the Department of Transportation.~~
- ~~5. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage system, if required, shall be constructed meeting with the approval of the Department of Public Works and the Department of Transportation prior to the issuance of a Certificate of Occupancy.~~
- ~~6. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.~~
- ~~7. 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.~~
- ~~8. 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.]~~

Mr. Ken Verosko

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~~[9-]5.~~ The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

~~[10.]~~ Upon compliance with all conditions of approval, the applicant shall provide, in writing, a final status report to the Planning Director

11. 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.

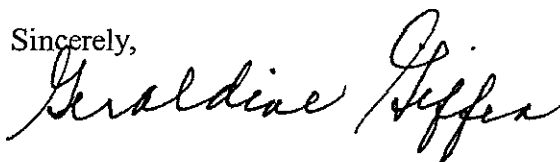
~~_____~~ C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

~~_____~~ 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.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Geraldine Giffin, Chairman
Leeward Planning Commission

Lkenveroskopp1253jpc

cc: Ms. Lori Mikkelson
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu
Mr. Gilbert Bailado ✓