



County of Hawai'i

PLANNING COMMISSION

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February 17, 2006

Ono Loa Orchards, LLC
c/o David & Daniel Davis
P.O. Box 1229
Kurtistown, HI 96760

Gentlemen:

Special Permit Application (SPP 05-000021)
Applicant: Ono Loa Orchards, LLC
Request: Fruit Stand/Retail Concession
Tax Map Key: 1-7-13:portion 106

The Planning Commission at its duly held public hearing on February 3, 2006, voted to approve the above-referenced application to establish a fruit stand, retail concession and certified kitchen on 0.5 acre of land situated in the State Land Use Agricultural District. The property is located along the northwest side of the Hawaii Belt Road (Highway 11), approximately 320 feet northeast of the Highway 11-Kukui Camp Road intersection, O'laa Reservation Lots, Puna, Hawaii.

Approval of this request is based on the following:

The applicant, Ono Loa Orchards, LLC, is requesting a Special Permit to establish a fruit stand and retail concession on a 0.5-acre portion of a 28.6-acre property. The applicant is requesting to establish a fruit stand, in which items that are grown on the property will be sold, such as lychee, longan, rambutan, starfruit, jackfruit, star apple, citrus, mangosteen and avocado; and a retail concession, in which items not grown on the property will be sold. These items will include other produce grown in the local community, as well as other products, such as fruit drinks, smoothies, coffee, tea, shave ice, veggie wraps, bentos, fruit plates, bake goods, locally grown nursery plants and cut flowers, and more.

Additionally, there will be a 40-foot refrigerated steel container, which will include a certified kitchen for food processing and a storage area. The applicant proposes

to eventually replace a temporary tarp structure with a permanent pier and pole structure with a metal roof. The covered area will be 968 square foot (22' x 44'). There will also be a unisex restroom on site.

There is an existing 4,200 square foot (70' x 60') greenhouse on the site, which is used to grow products that will be sold on the premise or purchased from local vendors.

The proposed 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 "D" or "Poor" by the Land Study Bureau and unclassified by the Agricultural Lands of Importance in the State of Hawaii (ALISH) map. The property is zoned Agricultural (A-20a). Since only a 0.5-acre portion of the 28.6-acre property will be used for the fruit stand and retail concession, it is not anticipated that the proposed use will displace any agricultural activity nor diminish the agricultural potential of the area. The remainder of the property will remain in agricultural uses with approximately 20 acres planted in fruit orchards and approximately 8 acres left as grassy open pasture land. Thus, the request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

Additionally, a condition of approval will be added to limit items for sale to agricultural products grown locally for the fruit stand and to limit items for sale to locally processed food products for the retail concession. The locally processed food products would include items such as smoothies, fruit drinks, fruit plates, bottled water, coffee and similar items that have been grown or processed locally. This will be in keeping with the agricultural use of the property and prevent a type of commercial store from being established that would allow the sale of many different types of non-ag items.

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. 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. There is a Japanese cemetery located on another area of the property. The existing cemetery will be not be affected by the proposed request. 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 August 1, 2005, 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 desired use will not adversely affect surrounding properties. Surrounding properties are zoned A-1a, A-20a and RS-20 and consist of vacant land, single-family dwellings and agricultural uses. Per building permit records, there are dwellings adjacent to the property to the east, west and south (across Highway 11). Several larger agricultural properties in the area are being utilized as pasture. The subject property is approximately 28.6 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. The area covered by the Special Permit is about 300 feet from the property line on the Hilo side, and on the Volcano side, the adjoining property is a County water tank site. Thus, no landscaping is being required on to mitigate potential adverse effects on the adjacent properties. For the highway frontage, landscaping shall follow the standards for a front yard landscaping under Rule 17. 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 have been received from the public as of the date of this writing.

According to Building Records, Building Permit No. 990100 was issued to Eric Weinert on January 28, 1999 for a greenhouse. The permit was finalized on April 14, 1999. Additionally, Building Permit No. 010509 was issued to Island Fruits on April 24, 2001 for a fruit stand, certified kitchen, pantry and unisex bathroom. This permit was issued to the previous owners and was not constructed. The applicant does not intend to construct the proposed development from this building permit, but intends to submit a new building permit.

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 project site is from the Hawaii Belt Road (Highway 11), a State-owned and maintained road with a 22-foot pavement and paved shoulders within an 80-foot right-of-way. The sight distance along the highway is very good. The State Department of Transportation issued a commercial driveway access permit (No. 4190) to allow access to the State Highway from the project site area. The driveway access to the highway is paved. 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 proposed development would be a convenient source of local products for the general public.

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 as Low Density Urban. The proposed use is consistent with the LUPAG Map and is also consistent with the Land Use and Economic elements of the General Plan.

Soils on the property are classified as "D" or "Poor" for agricultural productivity and unclassified by the Agricultural Lands of Importance to the State of Hawaii (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. Still only a small area of 0.5 acre of the total 28.6-acre area will be used for the proposed activity.

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 permit area: As the property has been improved with a greenhouse and cultivated in agricultural use, an archaeological inventory survey of the site was not conducted. The applicant has requested a "no effect" letter from the DLNR-SHPD. There is a Japanese cemetery located on site.

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. Additionally, the property is being utilized for agricultural purposes and has been developed with a greenhouse.

Feasible actions to protect native Hawaiian rights. 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 applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-SHPD.

Based on the above considerations, the approval of the request to establish a fruit stand and retail concession 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:

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 development 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 on the highway frontage of the Special Permit area shall comply with the Planning Department's Rule 17 for front yard landscaping of a CN zone.

3. The fruit stand shall be limited to the sale of agricultural products grown on-island and the retail concession shall be limited to food products processed on-island and agricultural products grown on-island only. The sales activities must include agricultural products grown on the subject property, when in season.
4. The applicant shall submit metes and bounds of the ½ acre project area by a registered surveyor prior to the receipt of Final Plan Approval. The activities will be limited to this permitted area. Commercial tours of the property and commercial tour busses are not permitted.
5. The covered area used for sales shall be limited to 1000 square feet in size.
6. The hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. daily.
7. Access to the project area shall meet with the approval of the State Department of Transportation.
8. The existing gate(s) within the property shall be relocated and set back forty (40) feet from the shoulder of Highway 11.
9. Any exterior signs shall conform with Section 3-12 of the Sign Code, Chapter 3 of the Hawaii County Code, relating to signs in the Agricultural district.
10. 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.
11. 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.
12. The applicant shall not disturb the gravesites in the Japanese Cemetery.
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 to what extent the conditions

of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

14. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
15. 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 applicant, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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.

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.

Ono Loa Orchards, LLC

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

Sincerely,



C. Kimo Alameda, 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