

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 23, 2007

Ms. Jeanette M. Baysa and Ms. Katherine A. Patton
Maka'ala Hawai'i Inc.
P.O. Box 486
Kurtistown, HI 96760

Dear Ms. Baysa and Ms. Patton:

Special Permit Application (SPP 07-000041)

Applicant: Maka'ala Hawai'i Inc.

Request: To Allow Retail Sales, Farmers Market, and Parking on
Three Acres of Land Within the SLU Agricultural District

Tax Map Key: 1-7-10:portion 16

The Planning Commission at its duly held public hearing on April 5, 2007, voted to approve the above-referenced application to allow the retail sales, farmer's market, and related parking on approximately 4 acres of land within the State Land Use Agricultural District. The property involved includes the existing Hilo Coffee Mill operation located between the 12 and 13 mile markers of Highway 11, Olaa Reservation Lots, Puna, Hawaii.

Approval of this request is based on the following:

The applicant, Makaala Hawaii Inc., is requesting a Special Permit to establish a retail sales concession with a certified kitchen, a farmer's market and related parking on approximately 4 acres of a 23.8-acre property. The applicant is the parent company of Hilo Coffee Mill, which operates a processing facility on-site. Hilo Coffee Mill has planted approximately 7 acres of coffee, tea, cacao and pineapple.

The retail sales concession and certified kitchen will be located within a portion of an existing 1,296 square foot structure. The applicant is proposing to sell and prepare items not grown on the property including coffee, espresso drinks, tea, tea drinks, fruit drinks, chocolate, t-shirts with business logo, mugs, burlap coffee bags, coffee and tea

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processing equipment. Additionally, the applicant is proposing to prepare and sell food items such as local style breakfasts and lunch items such as soup, sandwiches, wraps, etc.

The applicant will utilize an area of approximately 3,000 square feet for a farmer's market in up to 20 stalls, approximately 10' x 10' in size, in which farmers will sell locally grown or processed agricultural products. The applicant is also proposing to have a guest chef prepare breakfast and/or lunch using produce from the local farmers. This will be only on Saturdays and/or Sundays.

Lastly, the applicant is proposing to conduct on-site farm visits of the 1,200 square foot processing facility and the dry mill, which will be limited to the 4-acre permit area. On-site parking will be made available for the proposed request.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found 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) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended

The proposed use is an unusual and reasonable use of land situated within the Agricultural District. In recognizing that lands within 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. The project area is approximately 4 acres in size and the remainder of the property not located within the project area, which is approximately 20 acres, will be utilized for agricultural purposes. Based on the minimal use of land for the proposed request and the association with agricultural activities, the subject request is considered an unusual and reasonable use of agricultural land.

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. The project site is classified as "D" or "Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and is not classified by the Department of Agriculture's ALISH Map. The use will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. Additionally, a condition of approval will be added to limit food items

for sale to locally processed food products and to utilize agricultural products grown locally. This will be in keeping with the agricultural use of the property and prevent a type of commercial store or restaurant from being established that would allow the sale of many different types of non-ag items. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous discussion listed above, mainly because the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands that is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are zoned A-10a, A-20a and RS-20 and consist of single-family residential uses and larger agricultural parcels that are vacant or in agricultural uses. The nearest dwelling is located on the adjacent property to the northwest zoned RS-20. The subject property is large enough to help minimize negative impacts to surrounding properties. The area covered by the Special Permit borders the Hawaii Belt Road, the Old Volcano Road and a residential property to the northwest, thus, landscaping is being required to help mitigate potential adverse impacts along the bordering roadways and the surrounding properties. In addition, 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. Based on the above information, the applicant has met this criterion.

(C) Such use shall 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 proposed to be from the Old Volcano Road, which intersects with the Hawaii Belt Road. The Police Department noted several concerns regarding ingress and egress to the property, and parking along the highway. A condition of approval will be added stating that the applicant make any improvements to the Hawaii Belt Road and/or Old Volcano Road required by the Department of Transportation. There is ample area on-site to provide for off-street parking. All other services and utilities are available to the project site. Based on the above, the requested use will not

burden public agencies to provide additional services and the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services that may not be available or allowed by zoning for its residents.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The project site is classified as "D" or "Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. A majority of the 23.8-acre property is being cultivated in agricultural use (coffee, tea, cacao, pineapple, and avocado) and utilized for agricultural processing. The applicant intends to add 10 more acres of agricultural use including coffee and other fruit, vegetables and trees. Based on the small portion of land being utilized for this request and the associated agricultural activities, the applicant has met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. A majority of the activities on the property will continue in agriculture cultivation and processing. The uses requested would be related with the agriculture activity associated with Hilo Coffee Mill, which is presently operating on the subject property. The retail concession and certified kitchen associated with the proposed request will be located within a portion of the existing processing facility/dwelling. The farmer's market will operate only on the weekends within a 3,000-square foot portion of the property. All proposed activities by the applicant will be conducted entirely within the project site. Therefore, based on the above the discussion, the proposed use will not substantially alter or change the essential character of the land and its present use.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. 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 project site is located in area identified as

Low Density Urban and Important Agricultural Land in the General Plan. The request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area. Additionally, the approval of the subject request would support the goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawaii.
- Provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The proposed request will allow the applicant an opportunity to improve their quality of life, provide an economic environment that allows this new, economic opportunity and increase the development of the visitor industry for Hawaii.

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. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

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 several structures 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.

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 several structures.

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. A condition 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 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. The applicant shall submit metes and bounds of the approximate 4-acre project area by a registered surveyor prior to the receipt of Final Plan Approval. The activities of the Special Permit will be limited to this permitted area.
3. 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 shall also be indicated on the plans for the purpose of mitigating any adverse impacts to the roadways and the adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Landscaping shall comply with the bufferyard standard for separation of a CN (Neighborhood Commercial) zone adjoining a RS (Single-Family Residential) zone in Rule No. 17. The landscaping fronting the Hawaii Belt Road and the Old Volcano Road shall conform to the front yard landscaping requirements for a CN (Neighborhood Commercial) zone in Rule No. 17. The landscaping along the RS-zoned property to the east with the existing dwelling may be deferred, unless requested by the occupants of the dwelling.
4. The retail concession shall be limited to food products processed on-island and agricultural products grown on-island only. Sales activities must include agricultural products grown on the subject property, when in season. The retail concession may include retail items directly related to Hilo Coffee Mill, such as cups or shirts with the company's logo. The retail concession and certified kitchen shall operate within the existing 1,296 square foot structure.
5. The farmer's market shall be allowed only on Saturday and/or Sundays, and shall be limited to 20 stalls within a 3,000-square foot area.
6. The hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. daily.
7. All parking shall be on-site and parking is prohibited off-site along Highway 11.
8. Access shall be from the Old Volcano Road and all access is prohibited from Highway 11.
9. The applicant shall construct all improvements and comply with all requirements of the State Department of Transportation for access to the project site.

10. Any exterior signs shall conform to Section 3-12 of the Sign Code, Chapter 3 of the Hawaii County Code, relating to signs in the Agricultural district.
11. 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.
12. 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.
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).

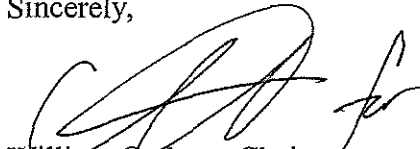
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Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

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.

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288, x205.

Sincerely,



William Graham, 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
DOT-Highways, Honolulu
Mr. Robert Usagawa, Zoning Inspector