

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

July 23, 2008

Ms. Cherie McArthur
13-4054 Lauone Street
Pahoa, HI 96778

Dear Ms. McArthur:

Special Permit Application (SPP 08-000055)
Applicant: Cherie McArthur dba Puna Girl Farms
Request: Establishment of Ag Tourism Which Includes Tours and
Retail Sales of Products
Tax Map Key: 1-3-8:24

The Planning Commission at its duly held public hearing on July 10, 2008, voted to approve the above-referenced application to allow the establishment of an Agricultural Tourism operation, which includes tours and retail sales of products on 6.4 acres of land situated within the State Land Use Agricultural District. The property is located on the north side of Pohoiki Road, adjacent to and east of the Lanipuna Gardens Subdivision, Pohoiki, Puna, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow the establishment of an agricultural tourism operation with a tour group picnic area and retail sales concession on a 2-acre portion of a 6.4 acre parcel. Hours of operation will be from 9:00 a.m. to 6:00 p.m., seven days a week. A maximum of 100 guests per day would come to the property in 4 to 6 tour vans. Parking will be provided on-site.

The applicant has contracted with one of the local tour companies to allow their guests to come to the farm to eat lunches and snacks in the existing pavilion building. The tour company provides the lunches and beverages to its guests, but the applicant will provide samples of macadamia nuts and other nut products grown on the farm. In addition, the applicant will sell products grown on her farm and other farms in the Puna region to the tour group guests.

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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 and is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. 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. 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 proposed use will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. Due to the severe decline in the price of macadamia nuts, the applicant has looked at new ways to financially sustain the farm. The applicant has determined that the proposed use will sustain the farm operations by enhancing farm income and will have the least impact on the neighboring community. The project site is 6.4 acres in size with 150 macadamia nut trees, an existing nut drying bin and pavilion building. All proposed activities will occur within the 2 acre park-like area that is not planted with macadamia nut trees. Based on the minimal use of land for the proposed request and its association with agricultural activities, the subject request is considered an unusual and reasonable use of agricultural land. 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.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The intent of Chapter 205, HRS related to agriculturally classified lands, is to provide protection to those lands with a high capacity for intensive cultivation. The proposed uses and activities will help to educate the tour groups about working farms in Hawaii and will promote the agricultural products grown on the farm and throughout Puna. This will help to financially sustain the farm so that it can continue to operate.

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.

As stated above, this criterion has been met.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are similarly zoned (A-10a, A-5a, A-3a, and A-1a) and consist of agricultural uses, farm dwellings, and vacant land. There are no dwellings located on adjacent parcels to the east and west of the property. The property borders Pohoiki Road to the south. It is not anticipated that the proposed uses will have any negative visual or noise impacts on surrounding properties or Pohoiki Road. In addition, hours of operation will be limited to 9:00 a.m. to 6:00 p.m., seven days a week. 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 Pohoiki Road. There is enough area on the 0.51 acre paved roadway parcel off of Pohoiki Road for vehicles to queue while the locked gate is being opened without disrupting traffic flow on Pohoiki Road. There is also ample space for tour vans to park on site. A condition of approval will be added that no parking will be allowed along Pohoiki Road, including the loading and unloading of passengers and/or supplies. County water is available to the property. Wastewater will be disposed of into an existing approved septic system. Telephone and electrical services are not available to the site, but are not needed since the hours of operation are during daylight and no electrical services are needed for the proposed activities and uses. In addition, cell phone service is available at the property. 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, various “non-agricultural” services may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils on the property are classified as “D” or “Poor” for agricultural activity by the Land Study Bureau, unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map, and identified as rOPE, or Opihikao extremely rocky muck by the USDA Soil and Conservation Services Soil Survey Report. Opihikao soils are primarily used for pasture and are not ideal for growing macadamia nut trees. The proposed uses and activities on the 2-acre uncultivated portion of the property will compliment the existing agricultural use of the remaining property.

(F) The use will not substantially alter or change the essential character of the land and the present use. As stated above, the proposed uses and activities will compliment the existing agricultural use, and in fact help to sustain and market the agricultural use of the property to tour groups. No structures or land disturbing activities will be generated by the proposed use. Therefore, based on the above discussion, the proposed use will not substantially alter or change the essential character of the land and its present use.

(G) The request will conform to, among other things, the Land Use and Economic elements of the General Plan; and is not contrary to the General Plan’s goals, policies and standards. 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 Extensive Agriculture in the General Plan. The request is not 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-Agricultural Element

- Encourage other compatible economic uses that complement existing agricultural and pastoral activities.
- Encourage, where appropriate, the establishment of visitor-related uses and facilities that directly promote the agriculture industry.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.
- Assist in the promotion of the agricultural industry whose products are recognized as being produced on the island of Hawaii.
- Assist in cooperative marketing and distribution endeavors to expand opportunities for local agricultural products for export as well as to the local market.

The proposed request will allow the applicant an opportunity to improve their quality of life, increase the development of the visitor industry for Hawaii by promoting the establishment of a visitor-related use that directly promotes and markets Hawaii's unique agricultural products.

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 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 kama'aina 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: The Department of Land and Natural Resources- State Historic Preservation Division issued a "no effect" letter stating DLNR-SHPD has determined that no historic properties will be affected by this undertaking because agricultural and residential development has altered the land.

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.

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.

Based on the above, the approval of the request to establish a tour group picnic area and retail sales 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. The applicant shall limit water consumption to levels allowed by the Department of Water Supply.
3. The proposed operation shall commence within one (1) year from the effective date of this permit. Prior to commencement, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Chapter 25-2-71, 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). These Landscaping Requirements shall apply to the pavilion and parking areas, and may be satisfied by existing plantings.

4. The retail sales concession shall be primarily limited to food products processed on-island and agricultural products grown on-island only, except for retail items directly related to Puna Girl Farms, such as T-shirts or caps with the company's logo. Sales activities must include agricultural products grown on the owner's property, when in season.
5. The tour group picnic area and retail sales concession shall operate within the existing pavilion building.
6. The hours of operation shall be limited to 9:00 a.m. to 6:00 p.m., seven days a week.
7. All parking shall be on-site. Parking is prohibited off-site along Pohoiki Road, including loading and unloading of passengers and/or supplies.
8. 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.
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-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD 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 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.

Ms. Cherie McArthur

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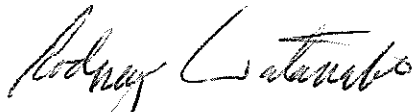
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up 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.

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

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

Lpunagirlfarms01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
DOT-Highways, Honolulu