

County of Hawai'i

PLANNING COMMISSION

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October 6, 2008

Mr. Gregory R. Mooers
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit Application (SPP 08-000062)

Applicant: Hawaii Wildlife Center

Request: Allow the Establishment of a Wildlife Rehabilitation Center and
Associated Educational Uses

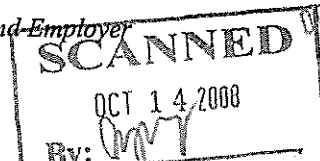
Tax Map Key: 5-3-7:portion 4

The Planning Commission at its duly held public hearing on September 19, 2008, voted to approve the above-referenced application to allow the establishment of a wildlife rehabilitation center and associated educational uses on approximately 1.65 acres of land situated within the State Land Use Agricultural District. The property is located adjacent (north boundary) to the Kohala Middle School, Halaula, North Kohala, Hawaii.

Approval of this request is based on the following:

The Hawaii Wildlife Center is requesting a Special Permit to allow the establishment of a wildlife rehabilitation center and associated educational uses on approximately 1.65 acres of land. The facility will be open 7 days a week and will consist of a single-story structure, approximately 3,000 square feet in size, which will have a staging area, intake area, holding area, washing area, drying room, intensive care and isolation room, laboratory, and administrative space for reception, office, staff, storage, kitchen and restrooms. There will also be an open air courtroom with interpretive exhibits, wildlife photographs and rest area for visitors, a planned education pavilion for presentations, visitor orientation meetings, professional seminars and scheduled use by staff, tour groups and community groups in North Kohala, and a paved access road and parking. The applicant anticipates approximately 2 full-time employees along with trained volunteer staff for support of wildlife care and public education programs.

Hawai'i County is an Equal Opportunity Provider and Employer



The center will contract with local veterinarians for medical services necessary to treat the injured wildlife. Additionally, the Center will be working with schools and public groups through unique conservation education programs, including a science mentorship afterschool program with Kohala High School, Waimea Middle School and West Hawaii Explorations Academy. Kohala Middle School is developing a program to propagate native plants for the Center with the guidance of the project's Landscape Architect.

The Hawaii Wildlife Center project was formed to fill a critical need for care and rapid response when native Hawaiian animals are injured or threatened. There is currently no facility in the Hawaiian archipelago for emergency response and treatment of endangered native wildlife, including those affected by natural and man-made disasters. The Hawaii Wildlife Center will be the statewide responder in events, such as avian botulism or a large oil spill.

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 proposed request will allow the development of a wildlife rehabilitation center and associated educational uses, which will benefit the community in the North Kohala area, as well as the entire state. It will be constructed on a 1.65-acre portion of a 193.80-acre property. Based on the benefits the proposed request will provide to the community and the State, and the minimal use of land for the proposed request, 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 "C" or "Fair" soil by the Land Study Bureau's Overall Master Productivity Rating and

“Prime Agricultural Land” 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. As mentioned above, the portion of land for the proposed project site is minimal in size in comparison to the size of the overall property. 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. The proposed use will not adversely affect surrounding properties. The surrounding properties to the northeast and east are zoned A-20a and consist of agricultural uses and vacant land. The properties to the northwest and west are zoned MG-10a and consist of several businesses, which are separated by the Kohala Lighthouse Road. The subject property borders the Kohala Middle and High School to the south, which will be involved in educational programs with the Center. To help mitigate potential adverse impacts along the bordering roadway and the surrounding properties, landscaping will be required as part of the Plan Approval process. 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 from Akoni Pule Highway (Highway 270), which is under the jurisdiction of the State Department of Transportation, onto the Kohala Lighthouse Road. Kohala Lighthouse Road is a privately owned roadway that has a 21-foot paved road within a 30-foot right-of-way. County water is available to the property. Wastewater will be disposed of into an approved individual wastewater system compliant with the Department of Health. All other essential utilities and services 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 a majority of the 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. The project site is classified as "C" or "Fair" soil by the Land Study Bureau's Overall Master Productivity Rating and "Prime Agricultural Land" by the Department of Agriculture's ALISH Map. Although the land is suited for agricultural uses, the area requested is a minimal portion of a much larger property that can be utilized for agricultural purposes in the future. Based on the small size of the property being utilized for this request, the applicant has partially met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The establishment of the proposed wildlife rehabilitation center and associated educational uses on approximately 1.65 acres of land will change the present use of the small portion of land, which is presently vacant of structures and uses, but the change will not be substantial. The proposed request will not substantially change the essential character of the land in this area, which consist of Kohala Middle and High Schools to the south, an industrial area to the northwest and vacant land to the north and northeast. The Center will be working with the schools in the area for educational purposes. 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 Important Agricultural Land in the General Plan.

The natural resources of the island of Hawaii are the physical and environmental assets that are recognized as useful, valuable, and desirable. These natural resources include, but are not limited to, the land, water, air, flora, fauna, soils, geologic features, geothermal steam, climate, wind, sunshine, ocean waters, and shoreline. Some of these

resources are finite and irreplaceable. However, several are replaceable at extreme cost and others are renewable. The island's growing population and expanding urbanization places a greater demand on the limited resource base. The establishment of a wildlife rehabilitation center and associated educational uses will help to protect and conserve important natural resources by protecting rare and endangered species. It will also provide educational opportunities for residents and visitors to learn the importance of Hawaii's unique and fragile environment and its significant environmental and natural resources.

The proposed project will be consistent with the following goals and policies of the Natural Resources and Shoreline element of the General Plan:

GOALS

- Provide opportunities for recreational, economic, and educational needs without despoiling or endangering natural resources.
- Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.
- Protect rare or endangered species and habitats native to Hawaii.

POLICIES

- Coordinate programs to protect natural resources with other government agencies.

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 entire project area has been used for agricultural purposes in the past, an archaeological survey of the site was not conducted. The State Department of Land and Natural Resources Historic Preservation Division has issued a "no-effect" letter dated July 21, 2008 stating that the DLNR-SHPD has determined that no historic properties will be affected by this project because intensive cultivation has altered the land and a site visit was conducted by Hawaii Island Assistant Archaeologist in December 2007 and a determination of no historic properties affected was made at that time (Log No. 2007.3850, Doc No. 0712MD1).

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, given the extent of land disturbing activities during sugar cultivation, it is highly unlikely that significant historic sites would be found on the subject property.

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. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of

Water Supply within one hundred and eighty days from the effective date of this ordinance.

3. Construction of the wildlife rehabilitation center 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 proposed structures, fire protection measures, paved driveway access and paved parking stalls, and other improvements associated with the proposed use in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) standards for the Village Commercial (CV) zone adjoining a Single-Family Residential (RS) zone.
4. Access to the subject property and any improvements within the Akoni Pule Highway shall be constructed in a manner meeting with the requirements and approval of the State Department of Transportation.
5. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
6. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of a construction permit. The recommended drainage improvements, if any, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
7. A Solid Waste Management Plan shall be prepared and submitted for approval 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-HPD 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.

10. 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).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

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

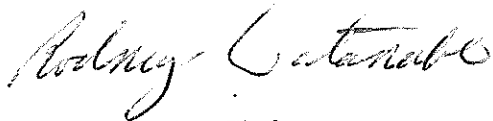
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Mr. Gregory R. Mooers

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

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

Lhawaiiwildlifecenter01PC

cc: Ms. Linda Elliott/Hawaii Wildlife Center
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