

## 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

March 6, 2009

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

Dear Mr. Mooers:

Special Permit Application (SPP 08-000072)

Applicant: Matthew James

Request: Construct and Operate Administrative Offices for a Distance  
Learning Center

Tax Map Key: 7-5-17:2

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The Planning Commission at its duly held public hearing on February 19, 2009, voted to approve the above-referenced application to allow the construction of an administrative office building to operate a distance learning center for the American Pacific University on approximately 2.1 acres of land in the State Land Use Agricultural District. The property is located along the northeast side of Kuakini Highway, directly across from Kona Sea Villas, Kahului 1<sup>st</sup>, North Kona, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow the construction of an administrative office building to operate a distance learning center for the American Pacific University on approximately 2.1 acres of a 76.761-acre property. The facility would be shared with PS Orchids, which operates on the subject property. The distance learning center would be approximately 8,000 square feet in size and include 6 offices (shared between PS Orchids and American Pacific University), a small library, reception area, computer center, consultation room(s), storage, maintenance, mail room, bathroom facilities and parking.

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, Hawai'i 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 site is an approximate 2.1-acre portion of a 76.761-acre parcel. A portion of the property is being used for the production of orchids. There is currently a single-family dwelling, a warehouse used for storage and shipping, and several shade structures used for growing orchids. Based on the minimal use of land for the proposed request and the minimal impacts to existing and/or potential agricultural activities of the property, 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, Hawai'i 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 Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The subject property is unclassified under the ALISH designation, and soils are classified as "E" or Very Poor. No active agricultural activities will be diminished, as only a small portion of the 76.761-acre parcel property will be used for the distance learning center and related uses. Therefore, the proposed use would not remove significant lands from agricultural use and would not be contrary to the objectives of the State Land Use Law for the Agricultural District.

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. 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 desired use will not adversely affect surrounding properties, which consist of mainly of vacant land and several residential subdivision and condominiums that are located a distance away from the project site. Surrounding properties and uses to the north consist of the Kona Hillcrest Subdivision, which is a 101-lot residential subdivision situated on lands zoned RS-7.5. To the east across Queen Ka'ahumanu Highway are several parcels zoned A-5 and the Pualani Estates Subdivision with lots zoned RS-7.5. To the south of the project site on the adjoining parcels are lots zoned A-1a, A-5a, RM-2.5 and CN-20. To the west across Kuakini Highway is the Kona Sea Villas Condominiums on land zoned RM-7. Additionally, the proposed use will utilize a small portion of a larger property that has a working orchid farm with large shade structures. To help mitigate any potential adverse impacts to the surrounding properties, landscaping will be required as part of the Plan Approval process.

(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 property will be from Kuakini Highway, which is a County owned and maintained roadway with a 22-foot wide pavement within an approximate 80-foot right-of-way. Water is available to the property from an 8-inch waterline in Kuakini Highway fronting the property. Wastewater will be disposed of via the County sewerline in Kuakini Highway fronting the property. Telephone and electrical services are available to the property. Police and fire services are available in Kailua-Kona. Flood Zones "AE" of the Waiaha Drainageway and Waiaha Drainageway Splitflow No. 2 affect the subject parcel as designated by the Flood Insurance Rate Map (FIRM). A condition of approval will be added stating that no structural improvements shall be allowed within areas designated Flood Zone "AE" on the Flood Insurance Rate Map (FIRM). Based on the above, the requested use will not burden public agencies to provide additional services.

(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. The land on which the proposed use is sought is classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating

and is unclassified by the Department of Agriculture's ALISH Map. Therefore, the land is unsuited for uses permitted within the district.

(F) The use will not substantially alter or change the essential character of the land and the present use. The use of the distance learning center and related uses will utilize a small portion of the 76.761-acre property. There is a working orchid farm that will continue to operate on the subject property. Therefore, based on the small area of the project site compared to the size of the property, 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 Urban Expansion in the General Plan LUPAG Map. 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.

Additionally, the proposed request is not contrary with the Kona Community Development Plan (KCDP) as the project site is located within the KCDP Urban Expansion Area and within the KCDP Sewer Priority Zone. The project will be connected to the County sewer line in Kuakini Highway.

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 purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options. In reviewing the proposed development, it has been determined that it is consistent with the objectives and policies listed under Chapter 205A, HRS, which includes protecting and preserving recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, beach protection, and marine resources.

In view of the recent Hawai'i 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: The applicant submitted an Archaeological Inventory Survey, which was conducted in November of 2008 by Rechtman Consulting, LLC of an 8.75-acre portion of the property, which contains the project site.

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 dated December 22, 2008 stating that DLNR-SHPD has determined that no historic properties will be affected by this project because intensive cultivation has altered the land, SHPD previously reviewed this project and mitigation has been completed and sufficient information has been collected for the identified historic properties. The Department of Land and Natural Resources-State Historic Preservation Division is recommending no additional mitigation measures at this time.

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 several structures. 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.

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 from the DLNR-SHPD.

Based on the above, the request to allow the construction of an administrative office building to operate a distance learning center for the American Pacific University on approximately 2.1 acres of land would be 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.

This request is approved subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.

2. The applicant shall submit a metes and bounds description in map and written form of the approximate 2.1-acre project area by a registered surveyor prior to the submittal of Final Plan Approval.
3. 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 180 days from the effective date of this permit.
4. Construction of the distance learning center and related improvements shall be completed within five (5) years from the effective date of this permit. Prior to the commencement of construction, Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and paved parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).
5. Hours of operation shall be limited to 7:00 a.m. to 6:00 p.m.
6. All driveway connections to Kuakini Highway shall conform to Chapter 22, County Streets, of the Hawai'i County Code. Access to Kuakini Highway, including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works.
7. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
8. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of a construction permit. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
9. No structural improvements shall be allowed within areas designated Flood Zone "AE" on the Flood Insurance Rate Map (FIRM).

10. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
11. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
12. The proposed development shall connect to the County sewer system.
13. 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-Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
14. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
15. Upon compliance with applicable conditions of approval, the applicant shall submit a final status report, in writing, to the Planning Director.
16. An extension of time for the performance of conditions of the permit 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 the Zoning Code.
  - C. Granting of the 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.

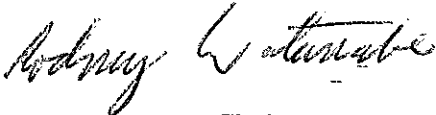
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Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate the revocation of the permit.

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

Lmatthewjamespp08-000072PC

cc: Mr. Matthew James  
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