

County of Hawai'i

PLANNING COMMISSION

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April 13, 2009

Mr. Warren Lee, Director
County of Hawai'i
Department of Public Works
101 Pauahi Street, Suite 7
Hilo, HI 96720

Dear Mr. Lee:

Special Permit Application (SPP 09-000074)
Applicant: County of Hawai'i, Department of Public Works
Request: Fire Station
Tax Map Key: 7-2-07:portion 1

The Planning Commission at its duly held public hearing on March 20, 2009, voted to approve the above-referenced application to allow the establishment of a fire station and related uses on approximately 2.80 acres of land within the State Land Use Agricultural District. The project site is located along the east side of Māmalahoa Highway (Highway 190) immediately north of the Highway 190-Mākālei Drive junction, Ka'ūpūlehu-Kau, North Kona, Hawai'i.

Approval of this request is based on the following:

The applicant proposes to construct and operate a fire station, which will include three bays to house an engine apparatus, ladder apparatus, HAZMAT vehicle and ambulance vehicle. The facility will include an office, dormitory, showers/restrooms, exercise rooms, laundry room and kitchen/training room. A hose tower/training facility will be added if funds become available. A diesel fueling tank for the apparatuses and an emergency generator will also be on-site. Construction of the facility will be done in a way so that it remains fully operational during natural disasters such as earthquakes and hurricanes. The fire station will operate on a 24-hour basis, 365 days per year. Twelve full-time staff will work at the facility. It will cost approximately \$4.8 million to construct and is estimated to open for operation at the end of 2009.

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As the property County funds will be used to develop the proposed project, the action is subject to the requirements of Chapter 343, Hawai'i Revised Statutes, regarding Environmental Impact Statements. A Final Environmental Assessment was completed and a Finding of No Significant Impact (FONSI) declaration was published in the May 8, 2008 bulletin of the Office of Environmental Quality Control.

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, Hawai'i 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 Hawai'i. 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.

The proposed use is unusual in that it is not agricultural in nature, but is a reasonable use within the Agricultural District because it will enhance public safety in the Mākālei area of North Kona.

In addition to the above listed criteria, the Planning Commission shall also consider the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

(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 because the proposed use is considered an unusual and reasonable use of the agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties. The closest properties that have the potential to be affected by the proposed use are located west and southwest across Māmalahoa Highway within the Mākālei Estates, Maka'ula, and Kalaoa View residential subdivisions. These properties are mainly in residential use with the closest dwelling located about 500 feet southwest of the project site. Potential adverse affects to surrounding properties include intermittent noise from emergency vehicle sirens and an increase in traffic on Māmalahoa Highway. As a condition of

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approval, the applicant will be required to retain the existing vegetation along Māmalahoa Highway to mitigate any potential adverse noise or visual impacts to adjacent properties. The approximately 80-foot wide highway right-of-way is adequate to accommodate future widening should a turn lane be required. In addition, a condition of approval will require the applicant install two flashing light signals in each direction along Māmalahoa Highway to alert drivers that emergency vehicles are exiting the project driveway. This requirement should further minimize the possibility of adverse impacts to the surrounding area.

(C) The proposed 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 site is from Māmalahoa Highway, a State-owned roadway with an approximately 80-foot right-of-way. Traffic along the highway will be interrupted when emergency vehicles leave the project driveway. The applicant will install two flashing signals along the highway in each direction. The flashing light will be activated during emergency responses to provide a warning to motorists on Māmalahoa Highway that emergency vehicles are departing from the fire station and to proceed with caution. To dispose of wastewater, the applicant will install an individual wastewater system meeting the requirements of the Department of Health. County water is available to the site via a 12-inch waterline in Māmalahoa Highway. The applicant will install a service lateral meter to provide water from the waterline to the site. Telephone and electrical services will be made available to support the proposed use. Based upon the above information, the proposed use will not unreasonably burden public agencies to provide infrastructure and services to the site.

(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 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 nearest existing fire station is located approximately 6.5 miles away, in Kailua. Establishment of a fire station in this area of North Kona would meet the growing public safety needs of the Mākālei and Kealakehe communities as a result of rapid population growth.

(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 "C" or "Fair" for

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agricultural productivity by the Land Study Bureau and Unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Although the sites soils are suited for agricultural productivity, a relatively small site (2.8 acres) will be developed for the fire station, in relation to the surrounding 989 acres of undeveloped, agriculturally suitable lands.

(F) The use will not substantially alter or change the essential character of the land and the present use. The current character of the project site is undeveloped and forested. The essential character of the land will not be substantially altered because the facility will be set back approximately 117 feet from the highway and will be visually buffered by the existing vegetation in this area.

(G) The request will not be contrary to the goals, policies, objectives and actions of the General Plan and Kona Community Development 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 Extensive Agriculture, which is defined as lands not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. Other less intensive agricultural uses such as grazing and pasture may be included in the Extensive Agriculture category. Although the proposed use is a non-agricultural and therefore is not strictly consistent with the LUPAG designation, it will fulfill a standard of the General Plan to locate fire stations within five miles of concentrated settlement areas. Currently, the closest fire station to the Mākālei community is over 6.5 miles away, and therefore does not meet this standard. The proposed use is consistent with the Kona Community Development Plan which identifies the proposed fire station on the *Official Public Facilities and Services Map for Public Safety* and in the Financing Plan. Based on this information, the proposed use is consistent with the goals of the General Plan and Kona Community Development Plan.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the coastal zone management program. The subject property is located over four miles from the nearest shoreline and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. Additionally, there is no designated public access to the mountain areas over the property. In a letter dated March 17, 2008, the DLNR-SHPD determined that no historic properties

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will be affected by the proposed use. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

In view of the 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: Several professional surveys/studies were completed of the project site and surrounding areas including an archaeological inventory survey conducted in August 2005 by Haun & Associates, a flora study conducted in 2007 by Ron Terry, Ph.D., a fauna study conducted in July 2003 by Patrick Hart, Ph.D. for the Palamanui Development and a cultural report conducted in 2000 by Kepā Maly for the Kaloko-Honokōhau Business Park.

The valuable cultural, historical, and natural resources found in the special permit area: No historic sites were found on the project site. The flora study found the threatened 'Ohe makai (*Reynoldsia sandicensis*) outside of the project site boundary. The fauna study identified the federally endangered 'Io (*Buteo solitarius*) on the mauka portion of the Palamanui property, which is near the project site. The cultural survey and flora study determined that the project site contains plant species that area utilized in cultural practices such as tī and kukui.

Possible adverse effect or impairment of valued resources: Although it was not found on the project site there is a potential for the threatened 'Ohe makai to be destroyed by construction and ground alteration. There are also plants on the project site (tī and kukui) utilized in cultural practices that could be destroyed by construction. However, these species are prevalent around the island.

Feasible actions to protect native Hawaiian rights: A condition of approval will be added requiring the applicant to hire a botanist to identify, flag/mark, and preserve any 'Ohe makai found on the project site. The applicant will also be required to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD. Thus, it is believed that the project would have no adverse impact relative to the cultural and historical resources of the area.

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Based on the above considerations, the approval of the request to establish a fire station and related improvements 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 180 days from the effective date of this permit.
3. The applicant shall install a reduced pressure type backflow prevention assembly within five feet of the meter on private property, which must be inspected and approved by the Department of Water Supply.
4. Construction of the fire station and related improvements shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Chapter 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). The landscaping requirement can be satisfied by retaining a sufficient buffer of existing vegetation along the site boundary perimeter.
5. Prior to issuance of a Certificate of Occupancy the applicant shall install two flashing light signals along Māmalahoa Highway in each direction, to alert drivers of emergency vehicles exiting the project driveway.
6. Prior to grading or grubbing of the property, the applicant shall retain a botanist to identify, mark or flag and preserve any 'Ohe makai found on the project site.
7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.

8. Individual wastewater system(s) shall be installed, meeting with the standards and requirements of the State Department of Health, prior to the issuance of a Certificate of Occupancy.
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-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.
10. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
11. 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 applicants, 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.

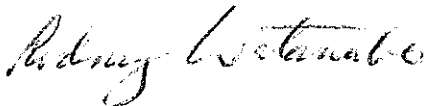
Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

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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,



Rodney Watanabe, Chairman
Planning Commission

Lcountydpwsp09-000074pc

cc: 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 ✓