

County of Hawai'i

PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

April 13, 2009

Herbert M. Richards, III, President
Kahua Ranch Limited
P.O. Box 837
Kamuela, HI 96743

Dear Mr. Richards:

Special Permit Application (SPP 09-000075)

Applicant: Kahua Ranch Limited

Request: Retail Sale, Service, and Training of ATV, UTV Vehicles

Tax Map Key: 5-9-2:portions 2 and 3

The Planning Commission at its duly held public hearing on March 20, 2009, voted to approve the above-referenced application to establish the retail sales, service and training of All Terrain Vehicles (ATV's), Utility Vehicles (UTV's), and other agriculturally useful vehicles on 1.269 acres of land in the State Land Use Agricultural District. The project site is within the existing Kahua Ranch operational headquarters area, approximately ½ mile east from the Kohala Mountain Road (Highway 250) between the 11.5 and 12 mile markers, Kahuanui, North Kohala, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow the continued use of retail sales, service and training of All Terrain Vehicles (ATV's), Utility Vehicles (UTV's), and other similar types of agriculturally useful vehicles on 1.269 acres of land. Operations will be conducted within an existing shop building and two existing storage buildings. The request includes the following operations:

- Retail Sales: There will be approximately 20 to 30 vehicles stored on-site and it is anticipated that approximately 60 to 70 vehicles will be sold per year. This will not include automobiles or trucks.

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- Service: The operations will include the maintenance and repair of the special type of vehicles sold. They are proposing to maintain and repair vehicles (not trucks or automobiles) not necessarily sold by the applicant.
- Training: The applicant will be the only dealer in the State capable of offering nationally recognized safety training on-site.

The applicant has been conducting sales and service of ATV's, UTV's and farm equipment for over 10 years but has recently been informed that they need a Special Permit to continue the use. The applicant will be providing sales, maintenance/repair and training of ATV's, UTV's and similar types of vehicles to ranchers, farmers and landowners on the island.

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 a 1.269-acre portion of a 50-acre property and a small portion of a 1,500+-acre property that are situated within the County's Agricultural (A-20a) zoned district. The applicant will be utilizing three existing buildings to conduct the retail sales and servicing of ATV's, UTV's and other similar types of agriculturally useful vehicles.

There are currently a variety of agricultural activities being conducted by Kahua Ranch on the subject properties and surrounding properties. The proposed request will not diminish any agricultural activity occurring on the properties. Therefore, the subject request is considered an unusual and reasonable use of the 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. Kahua Ranch is a major agricultural operation focusing on raising cattle and sheep on thousands of acres. Kahua Ranch also operates support businesses such as ATV tours, horseback riding tours and a bed & breakfast operation. The proposed request will sell All Terrain Vehicles (ATV's), Utility Vehicles (UTV's), and other similar types of agriculturally useful vehicles to support farming, ranching and land management activities.

The properties are situated on soil characterized as Palapalai silt loam, 6 to 12 percent slopes. The use will be located within three existing structures, which are situated within an area where soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and "Prime Agricultural Land" by the Department of Agriculture's ALISH Map. The proposed use will not displace any existing agricultural activity or diminish the agricultural potential of the subject properties. 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) The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. 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.

(B) The desired use would not adversely affect surrounding properties. The 1.269-acre project site is completely surrounded by properties owned by the applicant. Additionally, the properties are of sufficient size to minimize any potential impacts to other surrounding properties. It is not anticipated that the requested use will have any adverse affect on the surrounding properties.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The requested use will not burden public agencies to provide additional services. Access to the project site is via a ½-mile long, 15-foot wide asphaltic concrete paved roadway, which joins the Kohala Mountain Road approximately 9 miles north of its intersection with the Kawaihae Road. The Kohala Mountain Road has a pavement width ranging between 18 and 20 feet. The paved portion of the roadway terminates at the ranch headquarters where the remaining 100 yards of roadway is a well-maintained gravel surface to the project site area. All utilities are available to the three existing structures.

(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 properties 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. The request to allow the continued retail sales, service and training of ATV's, UTV's, and other similar types of agriculturally useful vehicles in this area is in line with the intent for allowing the issuance of a Special Permit.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The properties are situated on soil identified as Palapalai silt loam, classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and "Prime Agricultural Land" by the Department of Agriculture's ALISH Map. The proposed request will be conducted entirely within existing structures and will not adversely affect the preservation and agricultural use being conducted on-site.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed request will not substantially alter or change the essential character of the land or its present use as the use will be conducted within existing structures.

(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 properties are located in area identified as Important Agricultural Lands in the General Plan. As the use will be conducted entirely within existing structures, 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.

Land Use-Agriculture

- Encourage, where appropriate, the establishment of visitor-related uses and facilities that directly promote the agriculture industry.
- Preserve and enhance opportunities for the expansion of Hawai'i's Agricultural Industry.

Economic Element

- Provide an economic environment that 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 provide an economic environment that allows this new, economic opportunity, which will directly promote the agriculture industry.

The North Kohala Community Development Plan was adopted by Ordinance No. 08-151, effective on November 5, 2008. The plan identifies this area for agricultural uses. One of the plan's key planning implications relating to Kohala's physical setting and history includes agricultural tradition, which states that agriculture should be practiced and promoted in various forms. Another of the plan's key planning implications relating to Kohala's demographics and economics includes economic opportunities, which states that agriculture should be supported and promoted, and other economic opportunities should be explored.

Based on the above information, the request will not be contrary to the General Plan and the North Kohala 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 coastal zone management program. Given the fact that the proposed request will be operated within three existing buildings, it is unlikely that any archaeological features, threatened species of plant or animal will be affected by this project. There is no designated public access to the mountain areas over the properties. The properties are not located within the Special Management Area. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the properties will not be affected by any coastal hazards or beach erosion.

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: 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 proposed request will be conducted within existing structures, an archaeological inventory survey of the site was not conducted. The Department of Land and Natural Resources-State Historic Preservation Division has issued two "no-effect" letters dated September 25, 2008 and January 29, 2009 stating that they believe that no historic properties will be affected by this project because no ground-altering activities are being proposed at this time.

Possible adverse effect or impairment of valued resources: The properties do not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue. Additionally, the properties are being utilized for agricultural purposes, mainly cattle grazing.

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 proposed request is an unusual and reasonable use of land, which would not be contrary to 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, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval for the proposed development shall be secured from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code within one (1) year after receipt of Final Subdivision Approval. Plans shall identify all existing structures, fire protection measures, parking stalls, and other improvements associated with the use.
3. Buildings shall conform to all requirements of code and statutes pertaining to building construction. The applicant shall submit a building permit, if required, for the change of use for the structures.
4. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
5. 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.
6. 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-HPD) 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.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. An extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:

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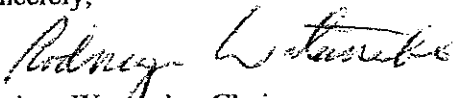
- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
- 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).

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



Rodney Watanabe, Chairman
Planning Commission

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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 ✓