

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 20, 2009

Mr. John Cummings
Hawaii Johns Inc.
P.O. Box 6362
Kamuela, HI 96743

Dear Mr. Cummings:

Special Permit Application (SPP 09-000082)

Applicant: Hawaii Johns Inc.

Request: Storage of Portable Rental Toilets, Parking for Employee and
Business Vehicles, and Office on 1.65 Acres of Land

Tax Map Key: 4-4-3:portion of 50

The Windward Planning Commission at its duly held public hearing on July 1, 2009, voted to approve the above-referenced application to allow the storage of portable toilets, parking for employee and business vehicles, and office on 1.65 acres of land situated within the State Land Use Agricultural District. The property is located at the southwest corner of Highway 19 and Kalōpā Lower Road intersection, Kalōpā Homesteads, Hāmākua, Hawai'i.

Approval of this request is based on the following:

The Planning Commission found that the applicant's request to allow the storage of portable toilets, parking for employee and business vehicles, and office on 1.65 acres would not result in an irreversible use of lands of high agricultural potential if approved with a 5-year time limit. The time condition would allow the applicant ample time to find an alternative site. Based on these concerns, the Planning Commission added a condition limiting the life of the permit to 5 years along with the added standard administrative time extension condition. Additionally, a condition was added that there be no permanent structures constructed as part of the business.

The Planning Commission found that this was a special circumstance, and that denial of the request would be detrimental in this current economy to those currently employed by Hawaii Johns, Inc. The approval of the request would result in providing continued jobs and a greater service and necessary business to the community.

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The Planning Commission also found that the request would not adversely affect surrounding properties based on testimony and letters of neighbors who live adjacent or near the subject property.

Lastly, the Planning Commission found that the applicant has addressed the adverse negative visual impacts by adding additional landscaping along the highway frontage. The Planning Commission added the standard condition to secure final plan approval, including landscaping.

Based on the above considerations, the request 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.

Approval of this request is subject to the following conditions:

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. This Special Permit shall be valid for a period of five (5) years from the effective date of the permit.
3. Final Plan Approval from the Planning Director shall be secured within one year from the effective date of this permit in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify the portable toilet storage area, existing structures, driveway access and the area of parking associated with the proposed use. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties that may be caused by the requested use, in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).
4. There shall be no on-site disposal of waste or washdown of equipment on the property.
5. There shall be no permanent structures constructed as part of the portable toilet storage business.
6. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

Mr. John Cummings

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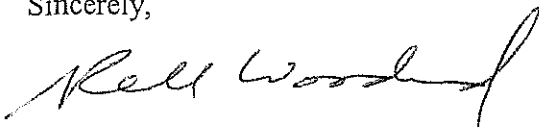
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or 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 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).

Should any of these conditions not be met or substantially complied with in a timely fashion, the 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,

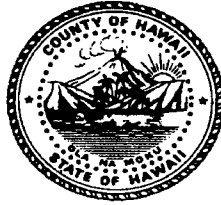


Rell Woodward, Chairman
Windward Planning Commission

Lhawaiijohnsspp09-000082PC

cc: Mr. Jeff Melrose
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
DOT-Highways, Honolulu
Mr. Gilbert Bailado ✓
Zoning Inspector - Hilo

Harry Kim
Mayor



Gregory Henkel, Chair
Joseph Clarkson, Vice Chair
Donn Dela Cruz
Donald Ikeda
Myles Miyasato
Thomas Raffipiy

County of Hawai'i

WINDWARD PLANNING COMMISSION

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OCT 18 2017

Mr. Zendo Kern
Planning Consultant
RR2 Box 4015
Pāhoa, HI 96778

Dear Mr. Kern:

SUBJECT: Special Permit No. SPP 09-000082
Applicant: Hawai'i Johns, Inc.
Request: Delete Condition No. 2 (Life of the Permit)
Tax Map Key: 4-4-003:050

The Windward Planning Commission, at its duly held public hearing on October 5, 2017, voted to approve the above-referenced request to amend Special Permit No. 09-000082 to delete Condition No. 2, which placed a 5-year life on the Special Permit. The project site is located at the southwest corner of Highway 19 and Kalōpā Lower Road intersection, Kalōpā Homesteads, Hāmākua, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. This Special Permit shall be valid for a period of ten (10) years from the effective date of this amended permit.
3. There shall be no on-site disposal of waste or wash down of equipment on the property.
4. There shall be no permanent structures constructed as part of the portable toilet storage business.
5. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

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OCT 18 2017

Mr. Zendo Kern
Planning Consultant
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6. 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 fashion, the Director may initiate procedures to revoke this permit.

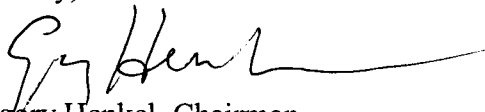
[Note: Ramseyer version available upon request.]

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

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,



Gregory Henkel, Chairman
Windward Planning Commission

LHawaiiJohnsAmendSPP09-082wpc
Enclosure: PC Findings Report

cc w/enclosures: Hawai'i Johns, Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
State Land Use Commission
DOT-Highways, Honolulu
GIS Section

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

HAWAI‘I JOHNS, INC.

AMENDMENT TO SPECIAL PERMIT NO. 09-000082 (SPP 09-82)

At their October 5, 2017 meeting, the Windward Planning Commission (WPC) recommended the following changes to the Planning Director’s recommendation:

- Amend Condition No. 2 to be valid for a period of *ten (10)* years from the effective date of this amended permit, rather than the five (5) years that the Director recommended.

Based on the preceding and following considerations, the WPC voted to approve the amendment to Special Permit 09-82 to grant a ten (10) - year time extension the effective date of this permit amendment to comply with Condition No. 2 (life of the permit). The property is located at the southwest corner of Highway 19 and Kalōpā Lower Road intersection, Kalōpā Homesteads, Hāmākua, Hawai‘i, TMK: 4-4-003: Portion of 050.

HAWAI‘I JOHNS, INC. has submitted a request to amend Special Permit No. 09-82, which allowed the temporary storage of portable toilets, parking for employee and business vehicles and office use on an approximately 1.65-acre portion of a 4.033-acre property within the State Land Use Agricultural District. The applicant is requesting to delete Condition No. 2 of Special Permit 09-82, which states: *“This Special Permit shall be valid for a period of five (5) years from the effective date of the permit.”* The applicant is requesting to delete Condition No. 2 to allow the continued use of the site for the activities granted under the Special Permit indefinitely. According to the applicant, the business serves the entire island of Hawai‘i including public parks, businesses, events, construction sites and other venues needing their services. When the original permit was granted, the Windward Planning Commission desired to have a time limit on the permit to allow the applicant an opportunity to seek another location(s) with the appropriate Industrial or Commercial zoning to operate their business. Over the past 6.5 years the applicant has been searching for other locations, and was successful in finding a commercial property in Hilo that met their criteria, i.e. proper zoning, reasonable location and a price point that worked for their business. According to the applicant, the Hilo location is suitable to serve the east and south portion of the island, however, the business serves the entire Island of Hawai‘i and therefore the Hilo location is unsuitable to allow them to serve the west and north sides of the island. The applicant has been searching for locations in the Hāmākua, Waimea and South Kona areas over the past 6.5 years and have been unable to secure a site which meets their criteria as industrial and commercial land in Kona is too expensive and does not meet other businesses requirements. Retaining the current location in perpetuity will allow the applicant to serve the west and north sides of the island.

The criteria for approving a Special Permit are based on Rule 6-7 in the Planning Commission Rules. Rule 6-7 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.

Granting of the amendment request would be contrary to the original reasons for granting the permit and the request would be contrary to the General Plan and the Zoning Code.

In 2009 the Planning Director forwarded a denial recommendation for the subject Special Permit to the Windward Planning Commission (WPC). The Director recommended denial based on the proposed use's lack of consistency with the criteria for granting a Special Permit. Namely, the director felt that the proposed use would not promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (HRS), as amended, the proposed was not a reasonable use of land situated within the Agricultural District, the proposed would be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations, the land upon which the proposed use is sought is well suited for the uses permitted within the district and the request would be contrary to the General Plan.

The land on which the proposed use is located is classified as "B" or "Good" soil by the Land Study Bureau's Overall Master Productivity Rating, which is the best class of soil as there are no Class A lands on the island of Hawai'i. 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.

Additionally, the land is classified as "Prime Agricultural Land" by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Prime Agricultural Land is land best suited for the production of food, feed, forage and fiber crops. The land has the soil quality, growing season and moisture supply needed to produce sustained high yields of crops economically when treated and managed, including water management, according to modern farming methods. Allowing a portable toilet storage baseyard on this property indefinitely would result in the conversion of land identified as Prime Agricultural Land to an irreversible non-agricultural use, which would be against the State Land Use Law and Regulations, which are intended to preserve, protect and encourage the development these lands for agricultural uses. The proposed use would be better situated within an industrial zoned area or within an agricultural district where the land might not be best suited for agricultural activities and yet classified as such.

Lastly, the land is identified as Important Agricultural Land in the Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan, which are those lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors.

These classifications identify that the subject property and area have the highest agricultural potential for agriculture uses on our island and therefore should be preserved.

While the WPC agreed with the Director's intent to preserve areas with the highest agricultural potential for agriculture uses, they felt that this was a special circumstance, and that outright denial of the request would be detrimental in the post 2008 economy to those employed by Hawaii Johns, Inc. They found that approval of the request would result in providing continued jobs and a greater service and necessary business to the community in the near term. Additionally, they found that the proposed use would not result in an irreversible use of lands of high agricultural potential, if approved with a 5-year time limit (along with the added standard administrative time extension condition). The Commission felt that this would allow the applicant ample time to find a more appropriate alternative site for their operation. Therefore, the WPC voted to approve Special Permit No. 09-82 with Condition No. 2 requiring a 5-year life of

the permit (with the possibility of an additional 5 years through an administrative time extension).

In 2014, the applicant was granted a 5-year, administrative time extension, which extended the life of the permit to July 20, 2019.

In 2011 the applicant was successful in finding a commercial property in Hilo that met their criteria, i.e. proper zoning, reasonable location and a price point that worked for their business. However, as the business services the entire island, the applicant feels that Hilo location is unsuitable to allow them to serve the west and north sides of the island. The applicant has been searching for locations in the Hāmākua, Waimea and South Kona areas over the past 6.5 years and have been unable to secure a site which meets their criteria as industrial and commercial land in Kona is too expensive and does not meet other businesses requirements and therefore requests that they be allowed to stay in their currently location in perpetuity.

Based on the preceding, the Planning Director feels that the request to delete Condition No. 2 (life of the permit) to allow the permanent storage of portable toilets, parking for employee and business vehicles and office use on an approximately 1.65-acre portion of a 4.033-acre property to be contrary to the original reasons that the WPC granted the permit and would not satisfy the criteria for granting a Special Permit as articulated in the 2009 denial recommendation.

The WPC wanted to ensure that there was no “irreversible use of lands of high agricultural potential” by placing what amounted to a 10-year life of the permit to allow the applicant to find a more appropriate location for their business. The applicant did this by purchasing commercially zoned land in Hilo in 2011. Over the years, the Planning Directors and Commissions have been consistent in not granting Special Permits on lands with the highest agricultural potential and this denial recommendation seeks to continue the practice of conserving those lands for agricultural uses in perpetuity.

While the Director is sensitive to the applicant’s difficulties in finding convenient, affordable accommodations on the west side of the island, there are available industrial zoned parcels in the Kawaihae Industrial Area, Kaloko Industrial Area and the Kohana‘iki Industrial area that are similar in size to the existing location in Kalōpā. The Director agrees with the State Office of Planning that Agricultural lands with the highest agricultural potential should be used for bona fide agriculture and should not be used to provide a cheaper alternative to more expensive industrial zoned lands.

That said, the Director finds that providing the applicant with a limited amount of additional time to find a more appropriate location to accommodate their west side operation would not run counter to the WPC’s original reason for granting the Special Permit, therefore the Director recommends amending Condition No. 2 so that the Special Permit expires within five (5) years of the effective date of the amended permit. Per our standard practice, this will not include the possibility of an administratively granted time extension, so if the applicant should desire additional time, they would need to request it from the Planning Commission prior to the permits expiration.

Based on the above findings, the Planning Director recommends denial of the request to delete Condition 2 (life of permit) and instead recommends amending the condition so that the Special Permit expires within ten (10) years of the effective date of the amended permit.

This recommendation is subject to the following conditions:

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. This Special Permit shall be valid for a period of ten (10) years from the effective date of this amended permit.
3. There shall be no on-site disposal of waste or wash down of equipment on the property.

4. There shall be no permanent structures constructed as part of the portable toilet storage business.
5. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
6. 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 fashion, the Director may initiate procedures to revoke this permit.