

## County of Hawai'i

### PLANNING COMMISSION

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January 29, 2010

Mr. Cleo Carlile  
C.L. Carlile Enterprises, L.P.  
P.O. Box 1287  
Big Spring, TX 79721

Dear Mr. Carlile:

Special Permit Application (SPP 09-000093)

Applicant: C. L. Carlile Enterprises, L.P.

Request: Visitor Center With Certified Kitchen for the Sale of Food

And Retail Items to Enhance Zip Line Tour Operation

Tax Map Key: 3-1-1:portion 22

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The Windward Planning Commission at its duly held public hearing on January 8, 2010, voted to approve the above-referenced request to allow a visitor center with a certified kitchen for the sale of food and retail items on 5 acres of land within the State Land Use Agricultural District. The property is located along the south side of Umauma Gulch, and Old Māmalahoa Highway, Wailua Government Tract, North Hilo, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to allow a visitor center with a certified kitchen for the sale of food and retail items on 5 acres of land to enhance the permitted zip line tour operation, which is located on the subject property and the adjacent property to the west (mauka). The visitor center facility will include the following:

- An approximate 1,900-square foot structure with a certified kitchen the sale of food and retail items. Food items will consist of cold service types of food and drinks, including sandwiches, salads, smoothies, canned and bottled drinks, etc. and retail items will include T-shirts, hats, mugs, etc.
- An approximate 400-square foot structure, which will include a four (4)-stall bathroom with an ADA stall, two (2) showers and a storage room.

- Concrete and gravel parking areas.

The visitor center will have four (4) employees and operate seven (7) days a week between the hours of 9:00 a.m. to 5:00 p.m. in the winter and 8:00 a.m. to 6:00 p.m. in the summer.

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 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, which contains the visitor center, restrooms and parking areas, is on a 5-acre portion of an 87.2-acre property located along the south side of the Umauma Gulch. Visitors of the facility will be able to access the property and experience the natural beauty created by the waterfalls and ponds within Umauma Gulch. The visitor center and related improvements are to support and enhance the permitted zip line tour operation, which consists of a total of eight (8) zip lines. The zip lines run along the gulch, allowing visitors to view an area that would normally not be available for viewing by the general public. There is also a scenic viewing area on the property that allows visitors to view three (3) waterfalls within the gulch. At this time, visitors from the World Botanical Gardens are allowed access to this waterfall scenic viewing area.

The visitor center allows guests an opportunity to purchase retail souvenir-type items, such as T-shirts, hats and mugs, and also food items, such as sandwiches, salads, smoothies, canned and bottled drinks. Umauma Gulch can be view by guests from the lanai area of the visitor center.

Additionally, the applicant is preserving the natural flora resources found on the property, such as the endemic forest, lauhala, ohia, hau tree fern, African tulip, noni, bamboo, and other plants and trees. Lastly, agricultural uses, such as organic farming and cattle grazing, will continue on portions of the applicant's property. Based on the

above information, 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 property consists of soil characterized as Hilo silty clay loam, 20 to 35 percent slopes. Soils on the property are classified by the Land Study Bureau's Overall Master Productivity Rating mainly as "C" or "Fair" with some "E" or "Very Poor" soil by the gulch. The property is classified mainly as Prime Agricultural Land with the area along the gulch being unclassified by the Department of Agriculture's ALISH Map. The proposed visitor center will be subordinate and incidental to the principal use of the zip line operation. The proposed use will not displace any existing agricultural activity or substantially diminish the agricultural potential of the site. Lastly, the visitor center will only utilize a 5-acre portion of an 87.2-acre 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) 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 will not adversely affect the preservation and agricultural use of the County's prime agricultural lands. Portions of the property will remain in agricultural use.

**(B) The desired use would not adversely affect surrounding properties.** Surrounding properties are similarly zoned A-20a. Umauma Gulch runs along the northern boundary of the property. Surrounding properties consist mainly of agricultural uses, such as cattle grazing, eucalyptus trees and various farming activities, along with scattered residences and vacant lands. To the south of the property is the World Botanical Gardens, which is also in the process of constructing a zip line tour operation. The nearest dwelling is located across the gulch near Old Māmalahoa Highway. The requested use is not anticipated to have any significant impact to traffic and/or public safety concerns. Therefore, it is not anticipated that the requested use will have an 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.** Access to the property is from Old Māmalahoa Highway, which is a County owned and maintained roadway with an approximate 14-foot pavement within a 50-foot right-of-way. There is a concrete driveway and concrete parking area on the property for off-street parking. There is also a gravel area that can be used for additional parking. Water is available from a water catchment system. Bottled water will be available to the visitors. The applicant will utilize a septic system for wastewater. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. A condition of approval will be included to require the applicant to meet all applicable County, State and Federal laws, rules, regulations and requirements. As such, the proposed use is not anticipated to unreasonably burden public agencies.

**(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 property consists of soil characterized as Hilo silty clay loam, 20 to 35 percent slopes. Soils on the property are classified by the Land Study Bureau's Overall Master Productivity Rating mainly as "C" or "Fair" with some "E" or "Very Poor" soil by the gulch. The property is classified mainly as Prime Agricultural Land with the area along the gulch being unclassified by the Department of Agriculture's ALISH Map. The proposed request will utilize a 5-acre portion of an 87.2-acre property and will not displace any existing agricultural activity or substantially diminish the agricultural potential of the 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 it will utilize only a small portion of a larger agricultural property. A majority of the property will remain in agricultural uses.

**(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 property is located in area identified as Important Agricultural Land in the General Plan. Important agricultural lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and 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.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawai'i.
- 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 allow the applicant an opportunity to improve their quality of life, provide an economic environment that allows this new, economic opportunity and increase the development of the visitor industry for Hawai'i.

Additionally, the view of Umauma Gulch looking makai is considered an example of natural beauty under the Natural Beauty Element of the General Plan. The proposed request will not affect the view of the gulch looking makai, but will allow visitors of the facility to access the property and view the gulch from areas previously not available for viewing by the general public.

**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 property was previously used for sugar cane and currently is used for cattle grazing and agricultural uses, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property.

The property is not located within the Special Management Area and is approximately 2,000 feet from the nearest coastline. Although there is no designated public access to the mountain areas or shoreline over the property, the property's northern boundary runs along the center of Umauma Gulch. There is evidence that people have traditionally accessed the gulch from Old Māmalahoa Highway to swim and to catch 'ōpae & prawns. A condition of approval will be added requiring the applicant not to block access to Umauma Gulch from Old Māmalahoa Highway. This will allow continued access for people to swim and fish in the gulch.

With this added condition, the proposed use will not adversely impact any recreational resources or adversely impact access to and along the shoreline, scenic and open space or visual resources, coastal ecosystems, and marine and coastal resources. Lastly, the property will not be affected by any coastal hazards or beach erosion.

**The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights.** 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 kama'āina 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 property has been used for agricultural purposes including sugar cane production and cattle grazing, 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 July 13, 2008 and November 6, 2009 stating that DLNR-SHPD determines that no historic properties will be affected by this project.

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.

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 considerations, the proposed visitor center with a certified kitchen for the sale of food and retail items 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, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. A description of the 5-acre permit area in map and written form by metes and bounds as certified by a registered surveyor shall be submitted to the Planning Department prior to the receipt of Final Plan Approval. All activities associated with the proposed use shall be conducted entirely within the permit area.
3. Construction of the proposed visitor 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 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 fronting the visitor center, as well as an additional gravel parking area. 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).

4. The applicant shall have bottled water available for visitors.
5. Public tours and retail sales shall be limited to the hours between 8:00 a.m. to 6:00 p.m., daily.
6. The public tours shall be limited to a maximum total of 30,000 visitors yearly.
7. Passenger vehicles used to transport visitors to the property shall be limited to a capacity not to exceed 30 passengers. No buses will be allowed on the property.
8. On-site parking shall be provided for vehicles and tour vans. Parking for the proposed visitor center and related uses shall be prohibited along Old Māmalahoa Highway fronting the subject property.
9. Weddings, concerts, conventions and other types of special events and activities shall be prohibited.
10. The applicant shall not block pedestrian access to Umauma Gulch from the applicant's property boundary along Old Māmalahoa Highway.
11. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Final Plan Approval.
12. 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.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. 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. The 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.



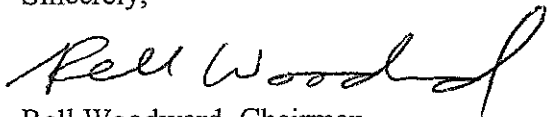
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- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for granting of the permit.
  - D. The time extension granted shall be 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.
15. 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 Planning Director, BJ Leithead-Todd, at 961-8288.

Sincerely,



Rell Woodward, Chairman  
Windward Planning Commission

Lcarlilespp09-000093

cc: All Aina Services  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
State Land Use Commission  
Department of Land & Natural Resources-HPD  
Mr. Gilbert Bailado /