

County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

August 5, 2010

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit Application (SPP 10-000102)
Applicant: Doutor Coffee Co. Hawaii, Inc.
Request: Use of Existing Dwelling for Special Events Activities
Tax Map Key: 7-5-013:007

The Leeward Planning Commission at its duly held public hearing on July 23, 2010, voted to approve the above-referenced application to allow the use of an existing three bedroom dwelling and its immediate surrounding grounds for special events such as weddings, seminars, and corporate retreats. Overnight accommodations associated with the special events are also proposed to occur within the existing dwelling. The proposed use would occur on approximately two acres of land situated within the State Land Use Agricultural District. The property is located on the east (mauka) side of Māmalahoa Highway between the Palani Road junction and Hōlualoa, just south of Hualālai Memorial Park, Hienaloli 1st – Puaa 1st, North Kona, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to use an existing 8,250-square foot, 3-bedroom single-family dwelling and its immediate surrounding grounds for special events such as weddings, seminars, corporate retreats and other low-impact activities. The area of the proposed special events, inclusive of the main dwelling, its immediate surrounding grounds and the parking area would consist of no more than 2 acres. Immediately surrounding grounds include but are not limited to two gazebos, a swimming pool and spa, and a guest house. The guest house is currently occupied by the resident manager of the coffee farm. The request would not include activities that generate a large amount of traffic over an extended period of time such as a farmers market or craft fair, with the exception of special events that deal specifically with the coffee industry (e.g. annual coffee picking festival and Kona Coffee Cultural Festival). Overnight accommodations and food service are proposed only in conjunction with special event activities. Special events would begin no earlier than 9:00 a.m. and end no later than

10:00 p.m. Use of amplified devices outdoors would end no later than 7:00 p.m. and would not exceed the State noise standards for residential uses. Up to four special events could be held in a day but the dwelling would not be used on a daily basis for special events. Given the size of the dwelling and immediately surrounding grounds, the applicant does not expect more than 75 participants per event (with the exception of the coffee picking festival and Kona Coffee Cultural Festival). On-site parking will be provided for buses, passenger vans and personal vehicles.

The main dwelling contains Hawaiian artworks, koa furnishings, authentic Hawaiian quilts, paintings, and antique coffee grinders and mills. The owner would like to showcase the dwelling and its grounds to the public by making it available for small special events.

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 that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. State Land Use Law allows agricultural tourism conducted on a working farm, for the enjoyment, education and involvement of visitors provided that the County adopts ordinances regulating agricultural tourism. In 2008 the Hawai'i County Council adopted Ord. 08-155 which amended the Zoning Code to create regulations for agricultural tourism operations on the island. However, these regulations do not allow weddings, catered events, parties and overnight accommodations without a special permit.

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 request is unusual in that the proposed request is not strictly agricultural in nature; the use would allow the applicant to hold special events within an existing dwelling and surrounding area on an active commercial coffee farm. Therefore, it is reasonable that this use be allowed in the Agricultural district. While not defined as an agricultural activity, the proposed use will directly support and, in many ways, promote the existing commercial coffee farm.

Such uses shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. 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 designated as Important Agricultural Land by the General Plan LUPAG Map and its soils are classified by the Land Study Bureau's rating system as class "C" or "Fair" soils for agricultural productivity. The majority of the property is an active commercial coffee farm planted in over 50,000 coffee trees. The proposed request involves 2 acres that is developed with a three-bedroom single-family dwelling, gazebos, pool and spa, and guest house. Because the proposed special events will be conducted within the existing dwelling and its immediate surrounding grounds, it will not displace any existing agricultural activity or diminish the agricultural potential of the property. Therefore, the use will not adversely affect the preservation and agricultural use of the County's agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The desired use would not adversely affect surrounding properties. Surrounding properties are zoned A-5a and mainly consist of coffee farms with scattered residences. The Hualālai Memorial Park and Hualālai Farms Subdivision are located on the adjacent lands to the north. The closest dwelling is located about 500 feet north of the subject property. The 2-acre permit request area is located generally in the center of the property and is surrounded on the east and west by coffee trees. According to the applicant, a meeting was held with the neighborhood to determine their concerns with the proposed land use and possible solutions. As a result of the meeting, the applicant has agreed to limit the nature of activities and hours of operation to address the neighbor's concerns about noise and traffic. A condition of approval will limit the hours of operation and use of amplified devices outdoors in order to minimize noise impacts on surrounding properties. A condition of approval will also limit the number of overnight guests to twelve. Although there will be an increase in traffic due to the proposed use, it will mainly occur during off-peak hours. Additionally, to reduce the amount of traffic in the general area, a condition of approval will limit the types of special events to low-impact activities such as weddings and corporate retreats. The applicant will also provide on-site parking for all special events. These additional requirements should further minimize the possibility of adverse impacts to the surrounding area.

Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The property is accessed via a 12-foot wide paved driveway from Māmalahoa Highway. A gate is located at the driveway entrance, set back approximately 25 feet from the highway. Inside the gate, near the entrance is a concrete paved parking

area that can accommodate 10 vehicles and a passenger van or bus. This parking area is used in connection with the applicant's farm tours and retail sales operation that occur on TMK 7-5-11:24, which is located about 1,500 feet north of the subject property on the makai side of Māmalahoa Highway. There is a concrete paved parking area on TMK 7-5-11:24 that can accommodate 19 vehicles, but the driveway is too steep for bus access. Therefore, farm tour participants arriving at the subject property parking area by bus are transported to TMK 7-5-11:24 via passenger van. In addition to the main parking area, a paved driveway near the main dwelling can accommodate about 10 vehicles. The property is also large enough to provide for unpaved off-street parking. The Department of Public Works (DPW) recommends that the existing gate be relocated a minimum of 50 feet from the highway right-of-way. Rather than relocating the gate at this time, the Planning Department recommends a condition of approval that would require the gate remain open from one hour prior to an event to one hour after special events on the subject property and events associated with the applicant's agricultural tourism operation on TMK 7-5-11:24. This will allow buses to proceed to the paved parking area on the subject property without blocking traffic on Māmalahoa Highway. DPW also recommends a sight distance study for the existing driveway approach. The existing driveway was approved by DPW as a residential and agricultural driveway. Sight distance studies are typically required for commercial driveways due to the higher traffic volumes associated with commercial uses. The requested use will generate relatively low traffic volumes. Nevertheless, a condition of approval will require that the existing driveway meet minimum sight distance requirements as required by DPW.

County water is currently provided to the subject property via a 5/8-inch meter, which is limited to one unit of water with an average daily usage of 400 gallons. Current water usage at the property exceeds the capacity of the existing meter and additional water cannot be made available by the County unless significant water improvements are constructed. Therefore, the Department of Water Supply (DWS) recommends the applicant use a private rainwater catchment system or other means to provide water for the proposed use. According to the applicant, the majority of the metered water is being used for agriculture. The DWS has indicated to planning staff that many of the coffee farms in Kona are irrigated with County water that exceeds the capacity of the allocated meter. Through its rules and regulations, the DWS has the authority to limit or restrict water flow to users that are exceeding their usage allotment. In this case, the DWS could limit water flow from the existing meter to its allocated usage (400 gallons per day) for the existing dwelling and proposed special events. The applicant would then need to provide another source for irrigation water. Thus the Planning Department does not agree with DWS's recommendation because it is not reasonable to require a rainwater catchment system for the proposed use when potable water via the County meter is available. A condition of approval will require the applicant provide a backflow prevention assembly for the existing meter.

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There is no public sewer in the area. Wastewater generated from the existing dwelling is disposed of into a cesspool, which is not adequate to handle wastewater for the proposed land use according to the Department of Health (DOH). A condition of approval will require that the applicant provide an individual wastewater system meeting with DOH approval for the proposed use prior to any special events being held.

All essential utilities and services are available to the site. Police and fire services are available in Kailua-Kona about 6 miles from the property.

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, a community may establish various non-agricultural services that may not be available or allowed by zoning for its residents. Since the district boundaries were established, demand has increased for tourism venues that focus on agricultural education. Use of the existing dwelling for special events on the applicant's coffee farm would meet this demand and thus support the Kona coffee industry in general.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is an active commercial coffee farm with over 50,000 coffee trees. Although it is unclassified by the ALISH system, its soils are designated "C" or "Fair" for agricultural productivity by the Land Study Bureau Soil Classification System, and therefore has high agricultural potential. However, the proposed request will be conducted within an existing dwelling and its immediately surrounding grounds which are not being actively farmed and thus will not adversely impact the agricultural potential of the land.

The use will not substantially alter or change the essential character of the land and the present use. The essential character of the property and surrounding area is agricultural. The proposed use will occur within an existing dwelling and surrounding area. No new construction is proposed as part of this request. The property will continue to be used primarily as a coffee farm. As such, there will be no change to the agricultural character of the land and its present use.

The request will not be contrary to the General Plan and Community Development Plan (CDP). 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 identified by the LUPAG map as Important Agricultural Lands, which are lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The proposed use will not diminish the existing use of the property and will indirectly promote agriculture, specifically the Kona coffee industry, by allowing visitors to spend time on an active coffee farm. The Economic Development section of the Kona CDP identifies objectives, policies, and actions that focus on supporting important foundations of Kona's economy as well as key opportunities for economic development. Two of the economic foundations of Kona are tourism and agriculture. The CDP specifically supports programs and events designed to promote and support agriculture in Kona such as the proposed request to hold special events on the applicant's coffee farm.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The property is not proximate to the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems and marine resources. Additionally, it is not located in the Special Management Area. There is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the applicant, no valued cultural or natural resources exist on the property and there is no evidence of any traditional and customary Native Hawaiian rights being practiced at the site. No formal archaeological study was conducted of the property due to past and current agricultural use of the land and because no ground disturbing activities are proposed.

Based on the above, approval of the request to allow the use of a dwelling and its immediate surrounding grounds for special events on approximately 2 acres of land would support the objectives sought to be accomplished by the Land Use Law and Regulations. Normally, the privileges granted in a special permit run with the land so that if ownership changes the new owner would be able to continue using the property in the manner approved with the permit. The Planning Department recommends restricting the permit life to cease if in the future, commercial agricultural activities on the property cease. 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. This permit shall become invalid if and when commercial agricultural activities on the property cease.

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3. Special events shall be limited to weddings, seminars, corporate retreats and other low-impact activities. Events that generate high amounts of traffic (i.e. farmers market, craft fair) shall not be allowed, with the exception of special event functions that deal specifically with the coffee industry such as the Kona Coffee Cultural Festival.
4. The number of overnight guests at the 3-bedroom dwelling shall be limited to no more than 12 people.
5. All special events shall occur between 9:00 a.m. and 10:00 p.m. The use of amplified devices outdoors shall end by 7:00 p.m. or sunset, whichever occurs earliest.
6. The noise level during any special event shall comply with the State Department of Health noise standards for residential properties and shall not exceed 55 decibels during the day and 45 decibels during the night at any property boundary.
7. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code within two (2) years of approval of this permit. Plans shall identify all existing structures, fire protection measures, parking stalls, and other improvements associated with the use.
8. Prior to commencement of the proposed use, the applicant shall secure and finalize a change of use building permit from the Department of Public Works Building Division.
9. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter on private property, which must be inspected and approved by the Department of Water Supply prior to commencement of the proposed use.
10. The access gate is to remain continuously open for the period of one hour prior to one hour after special events on the subject property and agricultural tourism events on the applicant's makai coffee farm located at TMK 7-5-11:24 to reduce the likelihood of arriving cars or buses backing up onto and blocking the Māmalahoa Highway. Should the Planning Department become aware that this condition is not being met, upon demand by the Planning Director the applicant shall relocate existing gate 50 feet back from the Māmalahoa Highway right-of-way.
11. The driveway shall meet minimum sight distance requirements, as required by the Department of Public Works.

12. An individual wastewater system shall be installed, meeting with the standards and requirements of the State Department of Health, prior to commencement of the proposed use.
13. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
14. 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-SHPD when it finds that sufficient mitigative measures have been taken.
15. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements. Any alcohol use shall be regulated by and comply with all State and County regulations and permit requirements.
16. 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 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).
 - 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 fashion, the Planning Director may initiate procedures to revoke the permit.

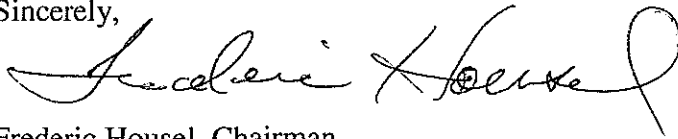
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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Maija Cottle of the Planning Department at 961-8288.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frederic Housel". The signature is written in dark ink and is positioned above the typed name.

Frederic Housel, Chairman
Leeward Planning Commission

Ldoutorcoffeespp10-000102

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 /