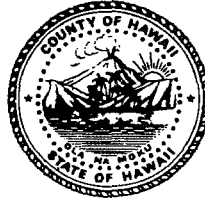


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County of Hawai'i

WINDWARD PLANNING COMMISSION

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

AUG - 8 2019

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

Dear Mr. Fuke

SUBJECT; Special Permit No. SPP 19-000207
Applicant: Earl and Jolene Lanning
Permitted Use: Allows the Establishment of a Lunch Wagon and Related
Improvements
Tax Map Key: 4-8-004:024

The Windward Planning Commission, at its duly held public hearing on August 1, 2019, considered the above-referenced request to allow the establishment of a lunch wagon and related improvements on 13,135 square feet of land in the State Land Use Agricultural District. The property is located on the south (mauka) side of Waipi'o Valley Road just north of its intersection with Kukuihaele Road, and about 800 feet east of the entrance to Waipi'o Valley, Lālākea, Hāmākua District, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicants, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The proposed lunch wagon and related improvements shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application dated May 17, 2019, any supplemental material, and the representations made before the Windward Planning Commission. Any substantial expansion of uses beyond what is represented in this document shall require an amendment to this permit.
3. No picnic tables, or other seating areas shall be permitted on the project parcel.

AUG - 9 2019

4. The applicants shall plant sufficient vegetation along the western corner of the property to eliminate soil erosion and deposition of sediment on to Waipi'o Valley Road.
5. The applicants shall place appropriate signage to restrict parking on Waipi'o Valley Road and that other facility issues are clear to visitors, including, but not limited to: parking, littering, access and respecting the residential properties.
6. The applicants shall ensure that the drainage outfall located at the end of the access driveway remains clear of green waste and other potential blockages.
7. As represented by the applicants, all visitor activities to the site shall occur daily between 9:00 a.m. and 5:00 p.m.
8. Prior to the issuance of Final Plan Approval, the applicants shall provide a copy of the Department of Health support kitchen approval, as well as the location of the lunch wagon's commissary as required in Chapter 50, Food Safety Code, to the Planning Department.
9. Construction of the proposed development shall be completed within two (2) 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 Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and proposed structures, fences, signage, water sources (potable and non-potable), wastewater systems, fire protection measures, gravel driveway access and gravel or grass-concrete parking stalls, outdoor lighting (if any, lighting must be shielded with light directed downwards), landscaping and other improvements associated with the proposed development.
10. Access from the project parcel to Waipi'o Valley Road, including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works-Engineering Division.
11. Prior to issuance of a Certificate of Occupancy, the applicants shall provide fire protection measures appropriate for the proposed use meeting with the approval of the Fire Department, including but not limited to water storage for firefighting purposes, water supply with sufficient fire flow rate, and providing fire department access roads with adequate turning radiuses to support the proposed development.
12. Prior to issuance of Final Plan Approval, the applicants shall submit a drainage study prepared by a licensed engineer to the Department of Public Works prior to the issuance of a construction permit. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

13. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
14. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the permit area and woody vegetation over 15 feet in height shall not be disturbed, trimmed or removed during bat birthing and pup rearing season of June 1st to September 15th without first conducting surveys for bat nests and coordinating with US Fish and Wildlife Service (USFWS) if nests are found. Surveys shall be conducted by a qualified biologist.
15. To protect any Hawaiian hawks in the vicinity of the property, ground clearing, grubbing activities and construction shall not occur in the permit area during hawk breeding season of March 1st to September 30th without first conducting surveys for hawk nests and coordinating with USFWS if nests are found. Surveys shall be conducted by a qualified ornithologist and are only valid for 14 days. Ground clearing or construction shall not occur within 1,600 feet of any active Hawaiian hawk nest during the breeding season. Regardless of the time of year, trimming or cutting trees containing a hawk nest is prohibited.
16. To protect any seabirds (Hawaiian petrels, Newell's shearwaters and band-rumped storm petrel) in the vicinity of the property, any lighting shall be fully shielded so that the bulb can only be seen from below bulb height. The lights shall be turned off when human activity is not occurring in the lighted area.
17. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
18. 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 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.

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Planning Consultant
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- 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).
19. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the 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.

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

Should you have any questions, please contact Alex Roy of the Planning Department at 961-8140.

Sincerely,
Joseph B.
Clarkson

Digitally signed by Joseph
B. Clarkson
Date: 2019.08.08
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Joseph Clarkson, Chairman
Windward Planning Commission

LLanningSPP19-207wpc

Enclosure: PC Findings

cc: Earl and Jolene Lanning
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State DLNR-HPD
US Fish and Wildlife Service
Plan Approval Section
GIS Section

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

EARL AND JOLENE LANNING
SPECIAL PERMIT APPLICATION NO. 19-000207 (SPP 19-207)

Based on the following findings, Special Permit No. 19-000207 is hereby issued to allow the establishment of a lunch wagon and related improvements on a 13,135-square foot parcel of land located in the State Land Use Agricultural District. The subject property is located on the mauka (landward) side of Kukuihaele Road, adjacent to the terminus of the Honoka‘a-Waipi‘o Road (State Highway 240) and approximately 700 feet east of the Waipi‘o Valley Lookout. The project site is located within Kukuihaele, Hāmākua, Hawai‘i, TMK: (3) 4-8-004:024.

The applicant is requesting a Special Permit to place a lunch wagon (mobile food establishment) and parking on a 13, 135- square foot parcel of land situated within the SLU Agricultural District. According to the applicant, the proposed development will consist of the following improvements:

- Placement of a 16-foot long, 8-foot wide, double-axle, mobile lunch wagon; and
- The development of six (6) parking stalls for visitors.

The applicants own a working farm located in Waipi‘o Valley, and intend to provide vegetables for the lunch truck which will “enhance the visitor experience” to Waipi‘o Valley. Cultivation of taro, luau leaves, ung choy, watercress, and other vegetables will be brought from the applicant’s farm to the lunch wagon for use in meal preparation; ensuring a steady and reliable market for the applicants’ farm. There is no proposed development of additional farming or other type uses being proposed on the subject parcel at this time.

The applicants plan to operate the lunch wagon daily from approximately 9:00 am to 5:00 pm, with the majority of the use being from 10:30 am to 4:30 pm. As with other lunch wagon type establishments, meals would be on a “take-out” basis with customers enjoying their food off-site at nearby parks. The applicants do not intend to provide sitting areas, or promote picnicking on the subject parcel; as such, no tables or other on-site accommodations are being proposed.

The grounds for approving a Special Permit are based on Rule 6-7 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 State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, 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 proposed placement of a mobile food establishment (lunch wagon) on a 13,135-square foot parcel is unusual in that it is not a *direct* agricultural use of that property. The use is reasonable in that the proposed operations will occur on a 13,000+-square foot parcel that may not be suited for large scale agricultural uses. Additionally, the property adjoins the applicants' residential parcel such that the project parcel supports those uses as well (existing storage shed and parking). The addition of a lunch wagon on the previously cleared and developed parcel will neither add nor detract from the existing agricultural potential of the property.

The property is not considered to have high agricultural potential from a resource perspective due to the small size of the property, and its current level of use. However, the applicants plan to utilize locally grown vegetables from their Waipi'o Valley farm may elevate and promote the agricultural character of this area. The resulting use of locally grown agricultural products for use on the property will support the objectives of Chapter 205, HRS. Based on the preceding, the proposed use is an unusual and reasonable use of land situated in the State Land Use Agricultural District.

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. As evaluated above, the applicants' request is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation of lands with high agricultural potential in the County of Hawai'i.

(B) The desired use would not adversely affect surrounding properties. The subject parcel is located near the intersection of two roads; Waipi'o Valley Road and Kukuihaele Road. The subject parcel is set at the beginning of a small residential area leading to Waipi'o Valley lookout. It should also be noted that the applicants' home is situated adjacent to the proposed location, and therefore will provide the ability to monitor and control any adverse impacts. The next closest residence is located across Waipi'o Valley Road, where vegetative screening masks the residential structures from the street. Access to the property will be from the State Highway, across an access easement to the parcel. It is anticipated that most movements will occur during non-peak hour periods, however, in this area AM/PM peak hour traffic is minimal. Staff has concerns regarding the current available sight line distance from the Waipi'o Valley overlook to the project site. A site visit by staff observed that the view was blocked by a number of large ironwood trees, and may pose a hazard to traffic stopping to pull into the subject parcel. Some clearing of the roadside vegetation may be necessary to provide adequate sight distance and safe ingress/egress into the property.

According to the applicants, the lunch wagon will operate daily from 9:00 a.m. to approximately 5:00 p.m., with the majority of clientele visiting during the lunch hours.

The applicants anticipate most of the vehicular movements to occur between 11:00 a.m. and 2:00 p.m. with the number of movements to range between ten (10) and twenty (20) per hour during those periods, and potentially between five (5) to ten (10) an hour outside the 11:00 A.m. to 2:00 p.m. timeframe. The proposed lunch wagon is intended to service the needs of the people already visiting this area and not to serve as an independent

attraction, which will bring guests to the area. Staff notes that the applicants also anticipate that pedestrians, already parked at the overlook site, may walk up Waipi'o Valley Road to the lunch wagon.

Once operational, there should be minimal noise associated with the operation of the lunch wagon, and with the modest increase in traffic to the project site. Hours of operation would be while visitors typically visit the Waipi'o Valley overlook, and this proposed site will not be used for large gatherings or events.

(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 project site is serviced by the State Highway and an existing access driveway which runs through the adjacent parcel to the project site. A site visit by staff noted that there was significant visual impediments to sight lines towards the Waipi'o Valley overlook due to overgrown ironwood trees located 30-40 feet west of the access driveway. Further consultation with the Department of Public Works (DPW) was instigated, but at this time the DPW has not responded with additional comments. Staff believes the current vegetation could be a detriment to safe ingress/egress to the site and should be cleared and maintained to provide appropriate sight lines.

According to the Department of Water Supply (DWS), the subject parcel does not have an existing water service with the Department and that the existing 4-inch waterline within Kukuihaele Road, fronting the subject parcel, is inadequate to provide the 2,000 GPM fire flow for fire protection, as required per DWS Water System Standards. The applicants' response to these comments agreed that the project will not require potable water demands from the DWS system, as the potable water will be supplied via a Department of Health approved "support kitchen".

Adjacent to the driveway access and Waipi'o Valley Road is a drainage culvert that drains stormwater and runoff from the project area and lands surrounding the subject parcel through a drainage outflow that runs across Waipi'o Valley Road to the north. According to the DPW – Engineering Division, all development-generated runoff shall be disposed of on site, and not directed towards any adjacent properties and that a drainage plan may be required by the Plan Approval process in accordance with Hawai'i County Code (HCC). The subject parcel is in an area designated as Zone X on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA); Zone X is considered an "area of minimal flood hazard".

There should not be any other public service type of impacts due to the proposed project. The site is currently serviced by police and fire facilities that are located less than 10 miles from the subject parcel in Honoka'a Town. The project location should not require any extension or expansion of these public services.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. The applicants' goal is to provide a service for those coming into this area and visiting the popular Waipi'o Valley or the scenic overlook. While the popularity of this site has continued to increase, some basic needs and services have not. The proposed lunch wagon concept aims to address this need, but in a way that promotes the rural and agricultural character and lifestyle of the community. Food items served at this site would aim to promote the area's local food culture and local agriculture as well as promoting the region's agricultural industry.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The soil classification for this site is “C” or “Fair”. While the designation suggests agricultural potential, the size of the parcel ~13,000 square feet, the current use of the property (a lawn for residential use), and the location (adjacent to a residential subdivision) make this site impractical for agricultural activity. However, in this case the proposed use will not result in the construction of a permanent structure. As such, the proposed use should not result in the permanent or semi-permanent removal of this area for future agricultural production. Additionally, the site has been previously cleared of vegetation and does not support any current agricultural activities.

(F) The use will not substantially alter or change the essential character of the land and the present use. Any proposed development of this site will ultimately alter the character of the land. However, this proposed use will not involve the creation of a new landform or permanent building. The existing condition of the parcel will be modified to allow for safe access and use by patrons of the lunch wagon, but will only include improvements to parking, signage to preserve access and minimize impacts to local residents, and some landscaping to alleviate some sight line interference and erosion that appears to be encroaching into the roadway. Based on the preceding, the use is not anticipated to significantly alter or change the essential character of the land but will improve the area and make it useful for the property owners.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The County of Hawai‘i’s General Plan is the policy document for the long range comprehensive development of the island of Hawai‘i. One of the purposes of the General Plan is to guide the pattern of future development in this County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property, and proposed Special Permit area as Important Agricultural Lands (ial), which are lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. While no agricultural uses are proposed on the subject parcel, it should be noted that by the use of locally (Waipi‘o Valley) cultivated products from the applicants’ farm, the lunch wagon could promote the region’s agricultural products and indirectly benefit the agricultural industry. As such, the proposed use will support many of the agricultural land use policies of the General Plan and Hāmākua CDP including the following policies:

General Plan – Agricultural Goals and Policies

- Preserve the agricultural character of the island;
- Preserve and enhance opportunities for the expansion of Hawai‘i’s agricultural industry.
- Encourage other compatible economic uses that complement existing agricultural and pastoral activities; and
- Encourage, where appropriate, the establishment of visitor-related uses and facilities that directly promote the agriculture industry.

Hāmākua CDP Guiding Principles

- Encourage a diverse and vibrant economy emphasizing agriculture and sustainable economies.

- Agricultural lands should be preserved in a manner that supports family farms, ecotourism, and a self-sufficient agricultural economy that encourages the local use of Hawai'i products.

Based on the preceding, request will not be contrary to the General Plan and Hāmākua 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. The Special Management Area (SMA) is part of the Coastal Zone Management Program regulated by the County. The subject property is located approximately 1,600 feet from the nearest coastline and is not situated within the SMA. There is no known public access to the shoreline or mountains through the subject property.

While none is proposed, all project related drainage shall be handled on-site and shall not be directed towards the county supported drainage outfall located at the edge of the roadway and access drive. Furthermore, the applicants shall comply with Chapter 10, Erosion and Sedimentation Control, Hawai'i County Code, and State Department of Health (DOH) water pollution control regulations, therefore, the project is not anticipated to have any negative impact on coastal ecosystems, or marine resources. Additionally, the applicants propose to place the lunch wagon such that it will not interfere with open space and scenic resources in the area (Waipi'o Valley).

Neither the applicants nor nearby residents have observed native Hawaiians or others using the site for the purpose of gathering of plants and/or exercising their religious or cultural beliefs. Additionally, no such requests of the applicant have been made to date. A request for Chapter 6E review for the subject Special Permit application was sent to SHPD on June 5, 2019. Neither the Planning Department nor the applicants have received any comments on the subject request from SHPD as of the date of this writing. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

As the entire site has been previously graded in the past to support residential uses located next door, there were no professional surveys conducted. According to the applicants, the property is entirely dominated by landscaping and grass lawn. Minor landscaping using common plants (i.e., coconut palm and Ti) are present adjacent to the existing driveway and along the property boundaries. Planning Staff conducted a site visit of the parcel and determined, via consultation with DPW, that there may be encroachments from the subject parcel into the County road right-of-way (Waipi'o Valley Road). There is observable erosion coming from the applicants' property on to the ROW, which is depositing on the roadway and shoulder area. Additionally, a stand of ironwood trees located west of the access driveway is potentially encroaching into the ROW, and appears to limit sight distance from the driveway towards the Waipi'o Valley Overlook. The potential encroachments should be addressed as part of this application process.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of a liquor license, issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others.

Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or affected agencies.