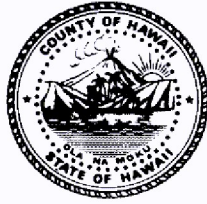


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## County of Hawai‘i

### WINDWARD PLANNING COMMISSION

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

May 17, 2023

Melissa Coughlin  
Law Offices of Yeh & Kim  
505 Kilauea Ave., Ste. B  
Hilo, HI 96721  
VIA EMAIL

Dear Ms. Coughlin:

**SUBJECT: Special Permit Amendment (PL-SPP-2023-000033)  
Special Permit No. 04-000005 (SPP-04-000005)  
Applicant: BWA, LLC dba Botanical World Adventures  
Request: Amendment to Condition No. 2 for a 5-Year Time Extension to  
Complete Construction  
Tax Map Key: (3) 3-1-001:015 (por.), North Hilo, Hawai‘i**

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The Windward Planning Commission, at its duly held public hearing on May 4, 2023, voted to approve the above-referenced request to amend Special Permit No. 04-000005 to amend Condition No. 2 for a 5-year time extension to complete construction. The project site is part of the existing Botanical World Adventures situated on the north side of Leopolino Road between Highway 19 and the Old Māmalahoa Highway, Kamae‘e, North Hilo, Hawai‘i.

Approval of this amendment is subject to the following conditions:

1. The applicant, successors or assigns (“Applicant”) shall comply with all of the stated conditions of approval.
2. Construction of the proposed development shall be completed within five years from the effective date of this amended 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/or proposed structures, paved driveway access and parking stalls associated with the proposed development. 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).

3. The hours of operation shall be limited to 7:00 a.m. to dusk/sunset daily, including weekends.
4. The total square footage of the visitor center shall not exceed 7,000 square feet. The parking area shall not exceed 20,000 square feet.
5. All parking areas shall be on site.
6. Prior to issuance of Final Plan Approval, the Applicant shall submit an updated TIAR, to be reviewed and approved by the Planning Director, in consultation with the Department of Transportation. The updated TIAR shall include, but not be limited to, an evaluation of whether intersection improvements such as ingress/egress to and from Highway 19 and acceleration/deceleration lanes at Leopolino Road and Hawai'i Belt Road (Highway 19) would be required as a result of anticipated traffic generated by Applicant's operations. If there are traffic impacts attributable to the Applicant's project, Applicant shall be required to provide appropriate traffic mitigation improvements at no cost to the state.
7. A drainage study of the property, if required, shall be prepared by the Applicant and submitted to the Department of Public Works for review and approval, prior to submittal of plans for Plan Approval review. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
8. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
10. In the 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, the Applicant shall 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.

11. The Applicant shall follow the Weed Risk Assessment referred to in the Division of Forestry and Wildlife's March 10, 2004 memorandum.
12. Comply with all applicable rules, regulations and requirements of the affected agencies, including the Department of Public Works, Department of Transportation, and Department of Land and Natural Resources Division of Forestry and Wildlife, for the development of the subject property.
13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the original permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being satisfied.
14. If the Applicant should require an additional extension of time, the Applicant shall submit their request to the Planning Commission for appropriate action.
15. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning 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 request is based on the reasons given in the enclosed Findings Report.

Should you have any questions regarding the above, please contact Jessica Andrews of the Planning Department at (808) 961-8155 or by email at [jessica.andrews@hawaiicounty.gov](mailto:jessica.andrews@hawaiicounty.gov)

Sincerely,



Dennis Lin, Chairman  
Windward Planning Commission

Melissa Coughlin  
Law Offices of Yeh & Kim  
May 17, 2023  
Page 4

Enclosure: Planning Commission Findings Report

cc w/enclosure via email: Department of Public Works  
State Department of Transportation  
County Real Property Tax Division  
Land Use Commission  
GIS Section



**COUNTY OF HAWAI‘I**  
**PLANNING COMMISSION FINDINGS**

**BWA LLC DBA BOTANICAL WORLD ADVENTURES**  
**AMENDMENT TO SPECIAL PERMIT NO. 04-005 (PL-SPP-2023-000033)**

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Based on the following findings and upon careful review of the request against the guidelines for granting an amendment to a Special Permit, the requested **5-year extension of time to Condition No. 2 of Special Permit No. 04-005 is hereby approved by the Planning Commission**. At the Planning Commission meeting on May 4, 2023, the Windward Planning Commission voted to amend Condition No. 6, in response to the applicant’s request for revised language, to clarify that an updated TIAR shall evaluate whether certain traffic improvements are required due to traffic impacts of the project, and that any traffic improvements required of the applicant will be for the purpose of mitigating impacts of the permitted use. The project site is part of the existing Botanical World Adventures situated on the north side of Leopolino Road between Highway 19 and the Old Māmalahoa Highway, Kamae’e, North Hilo, Hawai‘i, TMK: 3-1-001:015 (por.).

The applicant has submitted a request for a five-year extension of time to comply with Condition No. 2 (time to complete construction) of Special Permit No. 04-005. The condition currently states, *“Construction of the proposed development shall be completed within five years from the effective date of this amended 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), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. 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).”*

According to the applicant, development plans have recently changed such that the visitor center will be smaller in area than originally proposed and constructed as two small buildings rather than one large building, one to include an office, storage and restroom and a second for the downsized visitor center. Special Permit No. 04-005 was initially approved on June 5, 2005 to World Botanical Gardens to allow the construction of a visitor’s center, parking lot, and related improvements on approximately 3.53 acres of land. On May 19, 2010, the Planning Director granted a 5-year extension of time until June 8, 2015, to complete construction of the project in compliance with Condition No. 2. On October 1, 2013, the applicant acquired the assets of the previous applicant, World Botanical Gardens Inc. On August 6, 2015, the Windward Planning Commission approved amendments to Special Permit No. 04-005 for a 5-year extension of time to Condition No. 2 (complete construction) and the expansion of operating hours (Condition No. 3).

The applicant seeks an additional 5-year extension of time to comply with Condition No. 2 due to:



- Simultaneous hurricane events and the Puna lava flow; and
- The Covid-19 pandemic which suppressed the visitor market.

**Granting of the time extension request would not be contrary to the original reasons for the granting of the permit.** The use would continue to be an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended. No complaints were formally received relative to the requested time extension. As stated in the original permit, the existing use and current request for an extension of time will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection.

The Department of Water Supply has previously commented that County water is not available to the subject property. According to the applicant, water is available from a catchment system and stored in two 30,000-gallon metal tanks. Currently, bottled water is provided to patrons and staff, along with filtered catchment water for potable use. The applicant states that once the visitor center is constructed, the applicant will either continue to use the filtered water catchment system or an existing well to supply potable water needs. The applicant will need to comply with Department of Health safe drinking water standards if more than 20 people are being served on the property.

At the time of the 2015 amendment, the Department of Transportation (DOT) commented that they had no objections to the request for the extension of time but did have some concern over the expansion of operating hours, given the age of the traffic assessment (TIAR) and likely changes in traffic conditions. More recently, by letter dated April 10, 2023, DOT states that while they have no objections to the applicant's current request for a 5-year time extension, prior analysis on visitor counts and required conditions were based on a 2005 TIAR that may no longer be applicable to current traffic conditions.

As such, DOT recommends that a new TIAR be submitted and reviewed by the county prior to issuance of building permits, to include an evaluation of intersection improvements such as ingress/egress to and from Highway 19 and acceleration/deceleration lanes at Leopolino Road and Hawai'i Belt Road (Highway 19). DOT further states that should there be traffic impacts attributed to the project, the applicant is required to provide mitigated traffic improvements at no cost to the state. The Planning Director therefore recommends revising existing Condition No. 6 to require that an updated TIAR be submitted and approved by the Planning Department prior to issuance of Plan Approval and that the applicant shall be responsible for any recommended traffic improvements or mitigations.

Given the aforementioned requirement to complete an updated TIAR and implement any traffic improvements, in addition to the time needed to obtain building permits and complete construction, the Planning Director believes it is reasonable to recommend a five-year time extension to comply with Condition No. 2 (time to complete construction) from the effective date of the current amendment, rather than from the previous deadline.

**Approval of the request would not be contrary to the General Plan, Hāmākua Community Development Plan (HCDP) or the Zoning Code.** Since the



Windward Planning Commission approved amendments to the Special Permit in 2015, all land use designations have remained the same. The State Land Use designation is Agricultural, County zoning for the property is A-20a, and the General Plan LUPAG map designation is Important Agricultural Lands.

The requested extension of time would not be contrary to the General Plan or the Zoning Code. Although a small portion of the property will be used for the proposed development, the majority of the 26.27-acre parcel will remain in its current state. Given the applicant's intention to downsize the area of the visitor's center, the impact of development on the property may even be less than previously envisioned.

The proposed request will continue to encourage agricultural activities or the utilization of lands in a manner consistent with the Important Agricultural Lands designation by the General Plan LUPAG Map. Finally, the proposed request would complement and be consistent with the following Land Use and Economic elements of the 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 other compatible economic uses that complement existing agricultural and pastoral activities

Economic Element

- 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 which allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

The Hāmākua Community Development Plan (HCDP), adopted by Hawai'i County Council Ordinance 2018-078 in August 2018, designates lands in the vicinity of the subject parcel as Important Agricultural Lands (IAL). Given that the existing use incorporates botanical gardens into visitor activities, and as previously mentioned, the majority of the subject parcel remains available for agricultural uses, the request for a time extension to complete construction is not contrary to the goals of the HCDP.

**Approval of the request would not be 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. A small portion of the property that is outside the permit area is located within the Special Management Area. Since the permit area is not located within the SMA, it will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources. Additionally, there is no record of a designated public access to the shoreline or mountain areas that traverses the property. Based on the preceding, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes relating to Coastal Zone Management.

**Approval of the request would 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, or botanical study was included in the application.
- The valued cultural, historical, and natural resources found in the permit area: Neither the applicant nor the Planning Department are aware of any cultural or historic resources on the property, nor is the property listed as a historic site on the State or National Register of Historic Places. Additionally, there are no known customary or Native Hawaiian cultural rights exercised on the property.

By memo dated January 10, 2015, the Department of Land and Natural Resources, State Historic Preservation Division has issued a “no-effect” determination .

- Possible adverse effect or impairment of valued resources: Given the lack of valued resources identified on the property, it is unlikely that such resources will be impaired. The existing requirements of Condition No. 12 state that the applicant shall follow the Weed Risk Assessment referred to in the Division of Forestry and Wildlife's March 10, 2004 memorandum.
- 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; therefore, no action is necessary to protect these rights. A condition of the permit will require the applicant to stop work and notify the DLNR-SHPD should any unidentified sites or remains be encountered and proceed only upon receiving an archaeological clearance from the DLNR-SHPD.

Lastly, this recommendation is made with the understanding that the applicants remain responsible for complying with all other applicable governmental requirements in connection with the proposed use. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among 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 the affected agencies.

Based on the above considerations, the request for a 5-year extension of time to complete Condition No. 2 of Special Permit No. 04-005, approved in 2005 to allow a visitor center, parking lot and related improvements on approximately 3.53 acres of land situated within the State Land Use Agricultural District, is an unusual and reasonable use of land in the Agricultural district and would promote the effectiveness and objectives of Chapter 205, Hawai‘i Revised Statutes.