

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

CARNOR J. SUMIDA

APPLICATION TO AMEND SPECIAL PERMIT 08-000053 (PL-SPP-2025-000088)

Upon careful review of the request to delete Condition No. 2 of Special Permit No. 08-000053, the **Planning Director recommends this amendment request be approved by the Planning Commission.** Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this recommendation based upon additional information presented at the public hearing. This recommendation is based on the following findings:

The applicant is requesting an amendment to Special Permit No. 08-000053, to delete Condition No. 2 that states: "The life of the permit for the baseyard shall be for (10) years from the effective date of this amendment, or upon new industrial zoned lands becoming available within an approximate four (4)-mile radius from the subject property, within a reasonable period to effect the relocation, whichever occurs first." Special Permit No. 08-000053 was approved on July 7, 2008 to allow the establishment of a baseyard for 15 tractor-trailers, 3 water hauling trucks, and water and freight trailers on a compacted red cinder surface. The permit was granted with a five (5) year permit life. In 2013, the Windward Planning Commission granted a ten (10)-year time extension to Condition No. 2 (life of permit) of Special Permit No. 08-000053 which extended the life of the permit to October 23, 2023.

The applicant would like to continue operating their baseyard for the truck and trailer business that was established twenty-five years ago at the subject property. The applicant notes that the request to delete the condition limiting the life of the permit is similar to recently approved amendments for two other special permits within this area. Additionally, the Planning Director notes that, to date, no suitable industrial-zoned lands have become available within the Hawaiian Paradise Park Subdivision.

Granting the amendment request would not be contrary to the General Plan or Puna Community Development Plan (PCDP).

The County of Hawai‘i 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 as Rural. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. Typical lot sizes vary from one (1) to two (2) acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities.

The deletion of Condition No. 2 would not be contrary to the General Plan or the Zoning Code. The request would be consistent with the Land Use Element of the General Plan, which states “Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.” The granting of this request at this location would provide a convenient service of light industrial to the growing community.

The Puna Community Development Plan (PCDP) was adopted in 2008, after the original Special Permit was granted by the Planning Commission. Although the PCDP recommends that baseyards and other light industrial land uses should be in Regional Town Centers, it specifically identifies this area of 33rd Avenue as appropriate for light industrial development, with appropriate infrastructure and buffer landscaping. Given that Regional Town Centers in HPP, as identified in the PCDP, have not been developed to accommodate light industrial land uses, recent amendments for two Special Permits were approved for light industrial uses that resulted in removing the life of the permit and allowing it to run with the land (PL-SPP-2022-000023 and PL-SPP-2022-000027). Considering these approvals for similar amendments and given that the existing baseyard use does not require additional infrastructure and that buffer landscaping has been established, the Director believes it would be reasonable to delete Condition No. 2, allowing the applicant to continue to operate their business on the subject property and allowing the permit to run with the land.

Based on the preceding, the amendment request with modifications will not be contrary to the goals of the General Plan or the PCDP.

Granting the amendment request would not be contrary to the original reasons for the granting of the Special Permit. The original reasons for the approval of Special Permit No. 08-000053 are still applicable today and the request is not contrary to these reasons. 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. The land upon which the existing use is sought is unsuited for the uses permitted within the district. It is classified as “E” or “Very Poor” for agricultural productivity by the Land Study Bureau and unclassified by the Agricultural Lands of Importance to the State of Hawai‘i (ALISH) Map.

The use will not adversely affect surrounding properties. The applicant has established a landscaping buffer along the perimeter of the property to help minimize impacts to surrounding properties and the roadways. Since approval of the 2013 amendment to the Special Permit, the Planning Department has received no complaints regarding the operation.

Lastly, the continued operation will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Access to the property will continue to be from Uluhe Street (33rd Avenue), which was paved in 2009 to comply with Condition 3 of the initial permit.

According to the Department of Water Supply (DWS), the subject property does not have an existing water service with the Department and the applicant would need to submit water calculations should they wish to use county water. Potable water is not required at the site for the baseyard use and the applicant has indicated no intention to use county water, instead using water from one of his water trucks to clean the vehicles and trailers. Finally, there is no County sewer system servicing this area and the baseyard use does not generate wastewater.

Based on the above considerations, the Planning Director believes that granting the amendment request will not be contrary to the original reasons for granting the Special Permit.

The 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 archaeological inventory survey or flora/fauna study of the property was conducted due to subject property having been cleared and used as a baseyard. Furthermore, the applicant is proposing no new ground disturbance activities such as construction or development.

The valuable cultural, historical, and natural resources found in the permit area: The Department of Land and Natural Resources -State Historic Preservation Division (SHPD) issued a "no-effect" letter dated March 17, 2008, stating that SHPD has determined no historic properties will be affected by the proposed use since previous grubbing/grading has altered the land.

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.

Feasible actions to protect native Hawaiian rights and valued resources: 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.

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. 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 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. **Based on the above findings, the Planning Director recommends approval of the**

request to delete Condition No. 2 (life of the permit) and have the permit run with the land.

It is recommended that the Planning Commission approve the request with the following changes to conditions. (Material to be deleted is bracketed and struck-through; new material is underscored):

1. The applicant, its successor or assigns, (~~“Applicant”~~) shall be responsible for complying with all of the stated conditions of approval.
- ~~[2.]~~ ~~[The life of the permit for the baseyard shall be for ten (10) years from the effective date of this amendment or upon new industrial zoned lands becoming available within an approximate four (4) mile radius from the subject property, within a reasonable period to effect the relocation, whichever occurs first.]~~
- ~~[3.]~~2. The baseyard operations shall be conducted in substantial conformance with representations made in the application and to the Windward Planning Commission.
- ~~[4.]~~3. No further subleasing of the property shall occur for baseyard or other business-related activities.
- ~~[5.]~~4. A thick landscape screen shall be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties and for limiting the visibility of the baseyard from the highway. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along the west property boundary, and be designed to provide a complete visual screen from Highway 130 when the landscaping is fully mature. The ~~[applicant]~~Applicant shall immediately replace any trees that die in the future with fully mature trees. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along the north, east and south property boundaries, unless otherwise agreed to with neighboring property owners.
- ~~[6.]~~5. Access to the subject property shall be limited to 33rd Avenue.
- ~~[7.]~~6. The hours of operation for the baseyard operations shall be limited to 6:30 a.m. to 4:00 p.m., daily.
- ~~[8.]~~7. The ~~[applicant]~~Applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for this baseyard use.

- [9-]8. If the ~~[applicant]~~Applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission that the ~~[applicant]~~Applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
- [10-] ~~[If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.]~~