

July 31, 1978

Mr. Gordan Furutani
Executive Officer
Land Use Commission
190 South King Street
Suite 1795
Honolulu, Hawaii 96813

Dear Mr. Furutani:

Special Permit Application
Petitioner: Fraternal Order of Eagles,
Hilo Aerie No. 3642

In accordance with Chapter 205, Section 205-6, Hawaii Revised Statutes, we are transmitting the decision and findings of the County Planning Commission on the above application.

The special Permit request was to allow the establishment of a fraternal home on one (1) acre of land situated within the State Land Use Agricultural District at Kea'au, Puna, Hawaii, Tax Map Key 1-6-04:portion of 11.

The Planning Commission at a duly held public hearing on June 29, 1978 in the Councilroom, County Building, South Hilo, Hawaii, discussed the subject request. The Commission on July 20, 1978, voted to recommend the approval of the special permit to the Land Use Commission based on the following findings:

That the proposed use will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The intent of the Land Use Law and Regulations is to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the

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State of Hawaii. The area under consideration is classified as Agricultural by the State Land Use Commission. The Land Use Regulations state that lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District. The area under consideration consists primarily of pahoehoe lava. The Land Study Bureau has classified this land as "E" or very poor. Further, the property in question is not designated as Unique, Important or other Important Land under the Lands of Agricultural Importance to the State of Hawaii classification system. Although there may be certain agricultural activities which could be undertaken on the subject property, it is determined that the requested use will not be detrimental to the island's agricultural resource base nor will it have an adverse impact on the overall agricultural activity of the region and the island. Further, the proposed use is consistent with the County General Plan and the Zoning Code. Fraternal homes are a permitted use within the County's Agricultural zoned district. Based on these considerations, it is determined that the granting of the subject request will not be contrary to, but rather promote, the intent of the Land Use Law and Regulations.

That the proposed use will not unreasonably burden public facilities and services. The subject area is approximately one mile from the village of Keaau where police and fire protection services are available. The Keaau-Pahoa Road serving the proposed site is adequate for the expected traffic increase and all essential utilities are available to the subject site off the main highway.

That the proposed use will not adversely affect surrounding properties. Surrounding land uses include the Keaau Solid Waste Transfer Station, the Hawaii Island Humane Society, the Girl Scout Service Center, and vacant lands. The proposed fraternal home is not anticipated to adversely affect these uses as the anticipated impacts are limited to increased number of vehicles on the roads, increased water consumption, and sewage. These impacts, however, do not affect surrounding properties since the existing facilities and utilities are adequate or will be made adequate by the petitioner.

Mr. Gordan Furutani

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The Commission would like to note that the pattern of Special Permits in this area, if continued, could have the effect of creating an urban district. The landowner should be aware that future requests in this area will be reviewed accordingly.

The favorable recommendation was also subject to the following conditions:

1. That the requirements of the Departments of Water Supply, Public Works, and Health shall be complied with.
2. That the development shall occur as represented by the petitioner.
3. That tentative subdivision approval for the one (1) acre lot shall be obtained within one (1) year from the effective date of the Special Permit. The petitioner, as authorized by the landowner, shall be responsible for obtaining final subdivision approval.
4. That construction on the fraternal house commence within one (1) year from the date of final subdivision approval and be completed within two (2) years thereafter.
5. That all other applicable rules, regulations, and requirements, including the plan approval process, shall be complied with.

Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

Enclosed are copies of the Exhibits from the subject docket.

Sincerely,



WILLIAM F. MIELCKE
Chairman, Planning Commission

lgv

Enclosures

cc Mr. Alfred Michal
Land Use Division, DPED

July 21, 1978

Mr. Alfred Michal, President
Fraternal Order of Eagles,
Hilo Aerie No. 3642
P. O. Box 1189
Hilo, Hawaii 96720

Dear Mr. Michal:

Special Permit Application
Tax Map Key 1-6-04:portion of 11

The Planning Commission at its regular meeting of July 20, 1978, considered your application for a special permit to allow the establishment of a fraternal home on one (1) acre of land situated within the State Land Use Agricultural District at Kea'au, Puna, Hawaii.

The Commission voted to forward a favorable recommendation to the Land Use Commission subject to the following conditions:

1. That the requirements of the Department of Water Supply, Public Works, and Health shall be complied with.
2. That the development shall occur as represented by the petitioner.
3. That tentative subdivision approval for the one (1) acre lot shall be obtained within one (1) year from the effective date of the Special Permit. The petitioner, as authorized by the landowner, shall be responsible for obtaining final subdivision approval.

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Mr. Alfred Michal
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July 21, 1978

4. That construction on the fraternal house commence within one (1) year from the date of final subdivision approval and be completed within two (2) years thereafter.
5. That all other applicable rules, regulations, and requirements, including the plan approval process, shall be complied with.

Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

In the meantime, should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely,



WILLIAM F. MIELCKE
Chairman, Planning Commission

lgv

cc State Land Use Commission
Land Use Division, DPED

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the)	SP78-311
Petition for Special Permit)	
of)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND
<u>FRATERNAL ORDER OF EAGLES</u>)	DECISION AND ORDER
)	

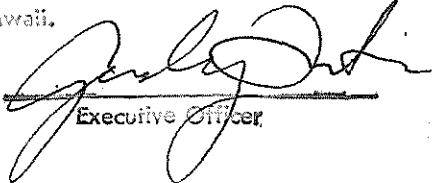
FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION AND ORDER

This is to certify that this is a true and correct copy of the
Decision and Order on file in the office of the State Land Use
Commission, Honolulu, Hawaii.

NOV 30 1978

Date

by



Executive Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the)	SP78-311
Petition for Special Permit)	
of)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND
FRATERNAL ORDER OF EAGLES)	DECISION AND ORDER
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION AND ORDER

The Land Use Commission of the State of Hawaii,
having duly considered the entire record in the above-entitled
matter, makes the following Findings of Fact and Conclusions
of Law:

FINDINGS OF FACT

1. The Petition for Special Permit was filed
by the Fraternal Order of Eagles, to allow the establishment
of a fraternal home on one (1) acre of land situated within
the State Land Use Agricultural District at Keaau, Puna,
Hawaii.

2. The subject property is located in the vicinity
of the Girl Scout Service Center and the Keaau Rubbish Dump
Site, along the Keaau-Pahoa Road, Tax Map Key 1-6-04: portion
of parcel 11.

3. The Petitioner proposes to construct a 2,800-
square foot fraternal home which is to include a meeting/
recreation room, bar, kitchen, office, storage area, and
restrooms.

4. The subject one (1)-acre area is a portion of a 22.4-acre parcel that the Petitioner intends to lease from W. H. Shipman, Ltd.

5. The County of Hawaii's General Plan Land Use Pattern Allocation Guide Map designates the area as "Orchard". Present County Zoning is Agricultural-20 acres (A-20a).

6. The Land Study Bureau's overall master productivity soil rating for agricultural use is Class "E" or "Very Poor" for the subject property. The subject site is not designated as "Agricultural Lands of Importance to the State of Hawaii" by the State Department of Agriculture.

7. The use of land surrounding the subject property includes the Keaau Solid Waste Transfer Station, the Hawaii Island Humane Society Kennel, and the Girl Scout Service Center. Much of the surrounding land area is vacant.

8. Access to the subject property is proposed to be from the Keaau-Pahoa Road via the Girl Scout Service Center access road, which has an 80-foot right-of-way.

9. The Petitioner has stated that the proposed site has been unused for many years and that it is unsuited for agricultural activities. The Petitioner has also stated that use of the site for the fraternal home would be the highest and best use.

10. The Hawaii County Department of Public Works and State Department of Health have cited applicable regulations and requirements that the proposed development must comply with.

11. The Hawaii County Department of Water Supply, Department of Parks and Recreation, Police Department, Fire Department, Hawaii Electric Light Company, Inc., State Department of Agriculture and Department of Transportation had no objections to the proposed use.

12. A public hearing on the Special Permit application was held by the Hawaii County Planning Commission on June 29, 1978. The Petitioner was the only person to testify on the permit request.

CONCLUSIONS OF LAW

1. "Unusual and reasonable" uses other than those which are permitted in an agricultural district may be permitted by Special Permit pursuant to HRS § 205-6 and the State Land Use Commission District Regulation, Part V.

2. The approval of the subject request will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The intent of the Land Use Law and Regulations is to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The area under consideration is classified as Agricultural by the State Land Use Commission. The Land Use Regulations state that lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be

included in the Agricultural District. The area under consideration consists primarily of pahoehoe lava. Although there may be certain agricultural activities which could be undertaken on the subject property, it is determined that the requested use will not be detrimental to the island's agricultural resource base nor will it have an adverse impact on the overall agricultural activity of the region and the island. Further, the proposed use is consistent with the County General Plan and the Zoning Code. Fraternal homes are a permitted use within the County of Hawaii's Agricultural zoned district. Based on these considerations, it is determined that the granting of the subject request will not be contrary to, but rather promote, the intent of the Land Use Law and Regulations.

3. The proposed use will not unreasonably burden public facilities and services. All essential utilities are available to the subject site.

4. The proposed use will not adversely affect surrounding properties. Anticipated impacts are limited to increased number of vehicles on the roads, increased water consumption, and sewage generation. These impacts, however, will not affect surrounding properties since the existing facilities and utilities are adequate or will be made adequate by the Petitioner.

5. The use described in the Petition is an unusual and reasonable use pursuant to HRS § 205-6 and State Land Use Commission District Regulation, Part V.

DECISION AND ORDER

IT IS HEREBY ORDERED that Special Permit No. 78-311, for the establishment of a fraternal home on one (1) acre of land situated within the State Land Use Agricultural District at Keaau, Puna, Hawaii, Tax Map Key 1-6-04: portion of parcel 11, be approved subject to the following conditions:

1. That the requirements of the Departments of Water Supply, Public Works, and Health shall be complied with.

2. That the development shall occur as represented by the Petitioner.

3. That tentative subdivision approval for the one (1)-acre lot shall be obtained within one (1) year from the effective date of the Special Permit. The Petitioner, as authorized by the landowner, shall be responsible for obtaining final subdivision approval.

4. That construction on the fraternal house shall commence within one (1) year from the date of final subdivision approval and be completed within two (2) years thereafter.

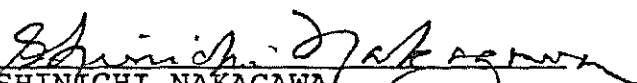
5. That all other applicable rules, regulations, and requirements, including the plan approval process, shall be complied with.


6. That should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

DATED: Honolulu, Hawaii, November 29, 1978.


LAND USE COMMISSION

By 
C. W. DUKE
Chairman and Commissioner


By 
SHINICHI NAKAGAWA
Vice Chairman and Commissioner

By 
JAMES CARRAS
Commissioner

By 
SHINSEI MIYASATO
Commissioner

By 
GEORGE PASCUA
Commissioner

By 
CAROL WHITESELL
Commissioner

By 
EDWARD YANAI
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the)
Petition for Special Permit) SP78-311
of FRATERNAL ORDER OF EAGLES) FRATERNAL ORDER OF EAGLES
_____)


CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use
Commission's Decision and Order was served upon the
following by certified mail:

Sidney Fuke, Planning Director
Hawaii Planning Department
25 Aupuni Street
Hilo, Hawaii 96720

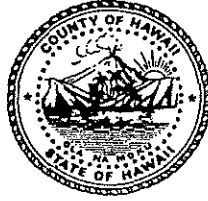
Alfred Michal, President
Fraternal Order of Eagles
Hilo Aerie No. 3642
P. O. Box 1189
Hilo, Hawaii 96720

Dated: Honolulu, Hawaii, this 30th day of November, 1978.



GORDAN Y. FURUTANI
Executive Officer
Land Use Commission

Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

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JUN 17 2002

Ms. Diana Kahler
Hawaii County Economic Opportunity Council, Inc.
47 Rainbow Drive
Hilo, HI 96720

Dear Ms. Kahler:

Special Permit No. 397
Applicant: Hawaii County Economic Opportunity Council, Inc.
Request: Amendment to Allow a Preschool Within an Existing
2,100 Square Foot Building
Tax Map Key: 1-6-4:58

The Planning Commission at its duly held public hearing on May 17, 2002, voted to approve the above-referenced request to amend Special Permit No. 397, issued to Fraternal Order of Eagles, to establish a Head Start Preschool and share with the Fraternal Order of Eagles its existing building situated on one acre of land in the State Land Use Agricultural District. The property is located on Opukahāia Street approximately 300 feet south of its intersection with the Keaau-Pahoa Road, in the vicinity of the Ke Kula 'O Nawahiokalani 'opu'u School, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The approval to allow a preschool operation is an unusual and reasonable use of land situated within the State Land Use 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

Ms. Diana Kahler

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Agricultural district. In 1978, the State Land Use Commission approved Special Permit No. 397 to allow the Fraternal Order of Eagles (FOE) to establish a fraternal home on the subject property. In amending this Special Permit, Hawaii County Economic Opportunity Council, Inc. (HCEOC) proposes to share the use of the FOE's existing facility as a Head Start Preschool for forty (40) 3-4 year old children and a staff of 10. Program objectives of HCEOC address early childhood development and health, child health and safety, child nutrition, child mental health, family partnerships and community partnerships to meet the needs of children and their families. Approval of this request would allow the dual use of the existing facility. The subject property has already been taken out of active agricultural use when the Special Permit for FOE was approved in 1978 for the fraternal home. Therefore, approval of the 2,100 square foot meeting hall as a preschool would not displace agricultural activity nor diminish the agricultural potential of the area. Due to the staggered use of the existing facility, the preschool operation would not substantially change the basis for approving the original special permit.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The meeting hall to be utilized as a preschool has already been established on the subject property. Due to the fact the property has been already developed, there are no ongoing agricultural activities on the property.

Thus, the proposed use will not take any active agricultural lands out of production since the meeting hall is already existing on the subject property. This parcel is a one-acre nonconforming lot situated within the County's Agricultural (A-20a) zoned district. The preschool use will be located within the existing 2,100 square foot building and the new playground which would be limited to the fencing of an already cleared and graveled area. A special permit was approved in 1978 to allow a fraternal home, therefore a basis has been established for allowing uses other than those agricultural in nature. The preschool use may be permitted within the County's Agricultural zone district provided the existing Special Permit No. 397 is amended. Since the facility would be used by the preschool during the day, this use would not significantly affect the existing FOE's activities which occur during the evening hours. The HCEOC would coordinate their schedule with the FOE to avoid conflicts. Therefore, the approval of the subject request shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The desired use shall not adversely affect the surrounding properties. The subject property is approximately one acre in size with an existing 2,100 square foot building.

The existing driveway and parking lot are paved. There are eleven (11) parking spaces, which is adequate for the staggered use of the facility. According to the Hawaii County Code, Chapter 25, Section 25-4-52, "Where uses and activities do not occur simultaneously, parking space requirements may be shared provided that (1) The utilization of the combined parking is shown to the satisfaction of the director to be noncompeting as to time of use". Adjacent to the subject property on the northeast is the Girl Scout Council Service Center. Across Opukahaia Street is the Ke Kula 'O Nawahiokalani'opu'u School consisting of preschool to high school students. The immediate surrounding properties are all zoned Agricultural (A-20a). The preschool use would be in keeping with the surrounding area and the already introduced educational activities. Due to its small size and the nature of its operation, the use would not negatively impact the surrounding properties. To date, no objections have been received from the community.

The desired 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 subject property is from the private Opukahaia Street and across an easement on TMK: 1-6-4:54. Both accesses are owned by W.H. Shipman, Ltd. who has no objections to their use by HCEOC. There are eleven (11) parking spaces, all of which are on-site. All 40 children will be transported to the preschool by bus in the morning. The part day program, consisting of 20 children, will leave by bus at 12:30 pm. The other 20 full time children will be picked up by their parents at 5:00 pm. Therefore, based on the foregoing, it is not anticipated that the use would adversely impact the existing roadway. As no food will be prepared on-site, the applicant would not be required to meet Department of Health Food Establishment Sanitation requirements. County water is available to the property. Further, the Department of Water Supply requires that a backflow preventer be installed. All agency requirements shall be complied with by the applicant.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. A special permit request was already granted to allow the fraternal home through Special Permit No. 397. This permit has already established the basis for allowing uses other than agricultural to occur on the subject property. The proposed preschool at the FOE site is intended to replace two Head Start classrooms that was displaced from a facility in Kurtistown several years ago. Due to its size, the establishment of a preschool in the existing building would be the appropriate use to be established by amending the existing special permit.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Further, the proposed use will not substantially alter or change the essential character of the land and the present use. The subject property has already been fully developed with the meeting hall, parking lot and cleared gravel area. Therefore, the

existing lands would not be altered by the establishment of the preschool use in the existing building and the enclosing of the cleared, gravel area for a playground.

The request is not contrary to the General Plan. The County General Plan Land Use Pattern Allocation Guide (LUPAG) Map, designates this property for Orchards. The property is situated within the County's Agricultural (A-20a) zoned district. The request is consistent with the Land Use element of the General Plan which is to *"Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County"* and to *"...encourage the development and maintenance of the communities meeting the needs of its residents in balance with the physical and social environment."* It is also consistent with the following goals, policies and standards of the Public Facilities Education Element of the General Plan.

GOALS

- Encourage the provision of public facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community.

POLICIES

- The County shall continue to seek ways of improving public service through the coordination of service and by maximizing the use of personnel and facilities.
- The County shall coordinate with appropriate State agencies for the provision of public facilities to serve the needs of the community.
- The County of Hawaii shall take positive action to further maintain the quality of the environment for residents both in the present and in the future.
- Encourage the provision of public facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community.

STANDARDS

(1) EDUCATION

POLICIES

Educational policies here relate to the provision of facilities rather than programs, which are the province of the State. It is nevertheless recognized that the facilities and programs are the tools necessary to improve total educational services.

STANDARDS

- In proposed communities, sufficient acreage shall be reserved for school facilities. Sites shall be free from flooding and drainage problems, excessive slope and shall incorporate appropriate street and driveway design and location to minimize traffic interference, pedestrian hazard, and to enable safe and easy access for vehicles, bicycles and pedestrians.

Therefore, the proposed preschool is consistent with this policy and standards set forth in the General Plan.

Based on the above considerations, the preschool is considered 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 or the original reasons for approving Special Permit No. 397.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit. Please note that in addition to new conditions affecting the preschool, conditions already complied with are being deleted and minor revisions are made to clarify language to be consistent with present day wording. Special Permit No. 397 is amended to read as follows (Material to be deleted is bracketed and material to be added is underscored):

- [1. That the requirements of the Departments of Water Supply, Public Works, and Health shall be complied with.
2. That the development shall occur as represented by the Petitioner.
3. That tentative subdivision approval for the one (1)-acre lot shall be obtained within one (1) year from the effective date of the Special Permit. The Petitioner, as authorized by the landowner, shall be responsible for obtaining final subdivision approval.
4. That construction on the fraternal house shall commence within one (1) year from

the date of final subdivision approval and be completed within two (2) years thereafter.

5. That all other applicable rules, regulations, and requirements, including the plan approval process, shall be complied with.]
1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. The proposed use shall be conducted in substantial conformance with representations made in the application.
3. The applicant shall finalize all permits and secure a Certificate of Occupancy from the Department of Public Works, Building Division within six (6) months from the date of approval by the Planning Commission.
4. Final Plan Approval for the operation shall be secured within six (6) months from the date of approval by the Planning Commission and shall be in accordance with Plan Approval pertaining to the Zoning Code. Plans shall identify the existing structure, signage, fire protection measures, parking stalls, driveway and other improvements associated with the use. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. Native species from the area shall be used when possible.
5. The applicant shall install a backflow preventer on the property meeting with the approval of the Department of Water Supply within six (6) months of the effective date of approval of the permit.
6. A Solid Waste Management Plan shall be submitted for review and approval to the Department of Environmental Management in conjunction with the submittal of plans for Final Plan Approval to the Planning Director.
7. Any exterior signs shall meet with the approval of the Department of Public Works.
8. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for the proposed use.

9. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
10. If the 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 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.
11. 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 original reasons for granting of the permit.
 - C. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - D. The time extension granted does not 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).

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.