

CERTIFIED MAIL

April 18, 1989

Mr. Anthony Silveri
Fern Acres Community Association
P.O. Box 130
Keaau, HI 96749

Dear Mr. Silveri:

Special Permit Application (89-7)
Tax Map Key: 1-1-39:219

The Planning Commission at its duly held public hearing on April 11, 1989, voted to approve your application, Special Permit No. 699, to allow the construction of a community association office and related improvements on 2.0 acres of land situated within the State Land Use Agricultural District at Keaau, Puna, Hawaii.

Approval of this request is based on the following:

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. The area under consideration is classified as Agricultural by the State Land Use Commission. The proposed use will be conducted entirely within a structure and will not restrict the remainder of the land from being used for agricultural purposes, nor will it interfere with other agricultural use in the area.

The desired use will not adversely affect the surrounding properties nor substantially alter the character of the land. Surrounding uses are residential and agricultural. The establishment of a community association office will maintain the residential and agricultural character of the area and the impacts resulting therefrom are anticipated to remain the same.

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Mr. Anthony Silveri
April 18, 1989
Page 2

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. As previously mentioned, roads, water and sewers are not publicly provided in the area. The purpose of the office is to facilitate the management of private community services such as roadway maintenance. The limited nature of the proposed use will not require additional demands or expansion of those services available to the subject property. Because of the nature of the existing access and the limited level of use, parking requirements may be met by provision of a graded, compacted and gravelled surface.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Increased population of the subdivision has increased requirements for association business management. The proposed use is an unusual use which will satisfy a need in the community without negatively impacting existing uses.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The land is generally classified as very poor agricultural land. The scale of the proposed use will not preclude other permitted uses from being conducted on the property.

The request is not contrary to the General Plan. The proposed use furthers the goal of the General Plan to "Designate and allocate land uses in appropriate proportions and in keeping with the social, cultural, and physical environments of the County". Approval of this request will enable the community association to better serve its members who are immediate landowners. The 320-square foot office and the nature of the activity therein will be in character with the Fern Acres subdivision.

Based on the above considerations, it is determined that the establishment of a community association office is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law Rules and Regulations.

Mr. Anthony Silveri
April 18, 1989
Page 3

This finding 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 subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify the structure, gravelled parking area, and landscaping associated with the association office.
3. Construction of the community association office and related improvements shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within one year thereafter.
4. Hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday.
5. The office shall be staffed by no more than one (1) worker. No group activities shall be held at the office, such as membership meetings or fundraisers.
6. Comply with all other applicable laws, rules, regulations and requirements of the Department of Health, Department of Public Works, and other relevant State and County agencies.
7. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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 complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.

Mr. Anthony Silveri
April 16, 1989
Page 4

8. An 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 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; and 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). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the permit.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Gary Mizuno
Chairman, Planning Commission

xc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission

bcc: Plan Approval Section

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
P 364 320 001

December 11, 1995

Charles Oliver, President
Fern Acres Community Association
P.O. Box 130
Keaau, HI 96749

Dear Mr. Oliver:

Special Permit No. 699 (SPP 699)
Applicant: Fern Acres Community Association
Request: Amend and Expand Existing Special Permit to Develop a
Community Resource Center
Tax Map Key: 1-1-39:219

The Planning Commission at its duly held public hearing on November 22, 1995, voted to partially approve the above-referenced request. Special Permit No. 699 allowed the construction of a community association office and related improvements on 2.0 acres of land situated within the State Land Use Agricultural District. The property is located on the east side of Lehua Street approximately 1,200 feet from the Lehua Street/30-foot wide private road intersection within the Fern Acres Subdivision, Keaau, Puna, Hawaii.

The denial on establishing a road maintenance storage area on a portion of the property is based on the following findings:

The proposed use would be contrary to the General Plan. The Land Use Element of the General Plan recommends that the County "designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County and that "The county shall encourage the development and maintenance of communities meeting the needs of its residence in balance with the physical and social environment." Based on the above goals, the establishment of a road maintenance storage area, which is in essence a baseyard, would be incompatible with the proposed community center, recreational area and fire station. Community center buildings, recreational areas and volunteer fire station buildings have been previously approved uses for other community associations on a single parcel. These type of social, recreational and public safety uses are compatible in nature and benefit the community as a whole. Permitting the road maintenance storage area would, in essence, be allowing a baseyard to be established on the property. The applicants proposed to store heavy equipment--including a

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chip spreader machine and any materials required in the chipseal process. The area would also be used to stockpile gravel and a 200-gallon tank to store asphalt-emulsion material, and other related materials within an approximately 2,000 square foot (100' x 200') area. Due to the limited size and width (100') of the property, noise and dust generated from these uses would have a negative impact on the immediate surrounding residents and, particularly, to the existing adjacent residence. Baseyards are more appropriately established in Industrial-zoned districts where uses similar in nature would exist. As there are not any Industrial-zoned lands available in the area, the proposed uses would be more appropriately established on a separate parcel in the subdivision through a Special Permit. Based on the above, the establishment of the road maintenance storage area on the subject property would be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations and should, therefore, be denied.

The approval of the community association center, open recreational area and the volunteer fire station is based on the following findings:

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 Districts, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The land on which the proposed use is located is classified as Orchards on the General Plan LUPAG Map. The parcel is also classified "E" or "Very Poor" by the Land Study Bureau for agricultural productivity and not classified by the ALISH Map. The subject 2-acre parcel has not been in active agricultural production and would not be taking high potential agricultural lands out of use nor will the requested use have an adverse impact on the overall agricultural activity in the area. The granting of the proposed community resource center, which includes an expanded community association center, open recreational area and volunteer fire station, would allow the establishment of non-agricultural uses on the property. Although open recreational areas are permitted within the State Land Use Agricultural district, this proposed use is included and reviewed as a part of the Association's comprehensive plan for the parcel. As one of the many large subdivisions that are not provided with County roads or services, community organizations become the viable means of providing for community needs. The proposed community operations would provide a central location where various community activities and protective services can be established in the best interest of the general welfare of the Fern Acres community. Based on the above, expanding the community office, establishing an open recreational area and allowing for a volunteer fire station would not displace any agricultural activity nor diminish the agricultural potential of the area and would not be contrary to the objectives of the State Land Use Law for the Agricultural district.

The desired uses will not adversely affect the surrounding properties. Surrounding uses include scattered residential and agricultural uses and vacant lands. There is an adjacent neighbor to the southeast who has expressed opposition to the request. There are single family dwellings located across the subject property to the west and scattered dwellings to the north. Other lands bordering the parcel are vacant. To minimize impacts to adjacent property owners, a minimum landscaping buffer 10 feet wide shall be established along all

other property borders. In addition, to alleviate and mitigate impacts from the proposed uses on an existing residence to the southeast, a total landscaping buffer 20 feet wide shall be established along that portion of the property where an existing dwelling is located. To minimize any noise impacts, from the proposed community resource center development upon the existing and future residents, use of the facilities during weeknights shall be permitted until 10:00 p.m. and weekends until 9:00 p.m. As office work is expected to have minimal impacts to surrounding properties and due to the size of the association structure, no limits are being placed on the number of employees.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and police and fire protection. Sewer will be by cesspool and water will be provided by a water catchment system. Access to the property is from South Kulani Road, a County road, unto Puhala Street, which has a pavement width of 30 feet within a 50-foot right-of-way. The subject property is located on Lehua Street, the second street on the left, which has an approximately 23-foot wide graveled roadway within a 50-foot right-of-way. Although the roads leading to the subject property are not paved to County standards, the proposed community and public safety benefits of the proposed uses outweigh the burden that unpaved roads place on public agencies. As the roads are private, maintenance is by the Fern Acres Community Association and not by the County. The advantage of constructing a volunteer fire station on the subject property is to increase the emergency response time to a growing community that is located a considerable distance (approximately 7 miles from Keaau) away from an existing fire station. Also, the construction of a community center building would allow for community activities to be held within the subdivision, in the immediate vicinity where the residents actually live. To minimize impacts generated by increased traffic a condition of approval shall be included to require all driveways and parking areas to be paved with chipseal, concrete or asphalt-concrete. The applicant is also encouraged to include as many extra parking spaces to accommodate community meetings and activities. Public agencies reviewing the request had no specific objections to the proposal.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The fact that this subdivision was created without adequate infrastructure is a tremendous burden on the County. There is a definite need for the proposed uses. The efforts of this community to take action and assume responsibility to increase their public safety needs through the construction of a volunteer fire station is laudable. By expanding the office into a community center, the Association would also have a place where meetings and activities can be held and where a sense of "community" can be fostered. In addition, creating the space for an open recreational center on the parcel would further allow for community gatherings and activities.

The land upon which the proposed use is sought is suited for the uses permitted within the district; however, the proposed use will not interfere with permitted uses. Although, the lands are zoned for agricultural uses, the proposed community association center, volunteer fire station and open recreational area and related improvements will be used by the existing residents. The community resource center will essentially support existing and future community development by providing a much needed community and public safety services. The center would take one parcel out of the 1,976 existing lots in Fern Acres out of potential agricultural uses.

The proposed uses will not substantially alter or change the essential character of the land and the present use. The subject property is approximately two acres in size with about three-fourths of the land cleared. There is an existing 320-square foot structure presently used as the community association office. There are no agricultural uses on the subject property and, as such, the establishment of the proposed community uses will not displace agricultural uses.

The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The proposed use is consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- * Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- * The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Public Facilities

- * 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.

The General Plan Land Use Pattern Allocation Guide (LUPAG) map designates the area for Orchards. The soils are classified "E" or "Very Poor" and the lands under ALISH system is unclassified. The subject property has not been used for agricultural purposes and would not take significant lands out of agricultural use.

Based on the above considerations, a community association center, a volunteer fire station, open recreational area and related improvements in the Fern Acres Subdivision are 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.

Due to the expanded uses, all previous eight (8) conditions of Special Permit No. 699 are hereby rescinded and replaced with the following new conditions (bracketed material to be deleted and underscored to be added). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

- [1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a

minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify the structure, graveled parking area and landscaping associated with the association office.

3. Construction of the community association office and related improvements shall commence within one year from the date of Final Plan Approval and shall be completed within one year thereafter.
 4. Hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday.
 5. The office shall be staffed by no more than one (1) worker. No group activities shall be led at the office, such as membership meetings or fundraisers.
 6. Comply with all other applicable laws, rules, regulations and requirements of the Department of Health, Department of Public Works, and other relevant State and County agencies.
 7. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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 complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.
 8. An 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 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). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.]
1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
 2. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of the permit.
 3. Final Plan Approval shall be secured from the Planning Director for the community association center, volunteer fire station, and recreational structures. Plans shall identify structures, fire protection measures, paved parking stalls and paved driveway (chip seal, concrete or asphalt concrete), and landscaping buffer associated with the proposed uses. Parking shall comply with the requirements of Chapter 25 (Zoning Code). Detailed

landscaping plans shall include a minimum 10-foot wide landscaping buffer in the form of trees and shrubbery along all perimeters of the subject property. A 20-foot wide landscaping buffer shall be established along the border where there is an existing dwelling. Additional landscaping as needed shall be determined during Plan Approval review. Plans shall also indicate appropriate fencing to be established along property boundaries adjacent to existing dwellings and when future dwellings are constructed.

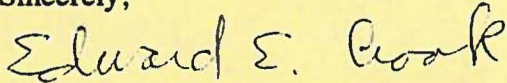
4. All construction of the proposed community resource center and related improvements shall be completed within ten years from the effective date of this special permit.
5. The hours of operation for the community center shall be limited to 8:00 a.m. to 10:00 p.m. on weekdays, until 7:00 p.m. on Saturdays and until 5:00 p.m. on Sundays.
6. The subject property shall not be used as a baseyard; and shall not be used to store road maintenance equipment and related materials nor be used for stockpiling materials.
7. Should any unidentified sites or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
8. Prior to securing a certificate of occupancy for any portion of the development, and upon final inspection of the property by the Planning Department, all landscaping and appropriate fencing shall be in place.
9. Upon compliance with applicable conditions of approval, and prior to the opening of any portion of the development or any related improvements; including, the installation of fences when a new dwelling is constructed, the applicant shall provide, in writing, a status report to the Planning Director.
10. An 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 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).

Charles Oliver, President
Fern Acres Community Association
Page 7

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 feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



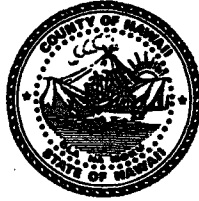
Edward E. Crook, Chairman
Planning Commission

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cc: Honorable Stephen K. Yamashiro, Mayor
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources

Stephen K. Yamashiro
Mayor



*For Information
+ Reference*

County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
P 364 320 006

(This letter supersedes the letter dated December 11, 1995.)

December 14, 1995

Charles Oliver, President
Fern Acres Community Association
P.O. Box 130
Keaau, HI 96749

Dear Mr. Oliver:

Special Permit No. 699 (SPP 699)
Applicant: Fern Acres Community Association
Request: Amend and Expand Existing Special Permit to Develop a
Community Resource Center
Tax Map Key: 1-1-39:219

The Planning Commission at its duly held public hearing on November 22, 1995, voted to partially approve the above-referenced request. Special Permit No. 699 allowed the construction of a community association office and related improvements on 2.0 acres of land situated within the State Land Use Agricultural District. The property is located on the east side of Lehua Street approximately 1,200 feet from the Lehua Street/30-foot wide private road intersection within the Fern Acres Subdivision, Keaau, Puna, Hawaii.

The denial on establishing a road maintenance storage area on a portion of the property is based on the following findings:

The proposed use would be contrary to the General Plan. The Land Use Element of the General Plan recommends that the County "designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County and that "The county shall encourage the development and maintenance of communities meeting the needs of its residence in balance with the physical and social environment." Based on the above goals, the establishment of a road maintenance storage area, which is in essence a baseyard, would be incompatible with the proposed community center, recreational area and fire station. Community center buildings, recreational areas and volunteer fire station buildings have been previously approved uses for other community associations on a single parcel. These type of social, recreational and public safety uses are compatible in nature and benefit the community as a whole. Permitting the road maintenance storage area would, in essence, be allowing a baseyard to be established on the property. The applicants proposed to store heavy equipment—including a

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chip spreader machine and any materials required in the chipseal process. The area would also be used to stockpile gravel and a 200-gallon tank to store asphalt-emulsion material, and other related materials within an approximately 2,000 square foot (100' x 200') area. Due to the limited size and width (100') of the property, noise and dust generated from these uses would have a negative impact on the immediate surrounding residents and, particularly, to the existing adjacent residence. Baseyards are more appropriately established in Industrial-zoned districts where uses similar in nature would exist. As there are not any Industrial-zoned lands available in the area, the proposed uses would be more appropriately established on a separate parcel in the subdivision through a Special Permit. Based on the above, the establishment of the road maintenance storage area on the subject property would be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations and should, therefore, be denied.

The approval of the community association center, open recreational area and the volunteer fire station is based on the following findings:

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 Districts, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The land on which the proposed use is located is classified as Orchards on the General Plan LUPAG Map. The parcel is also classified "E" or "Very Poor" by the Land Study Bureau for agricultural productivity and not classified by the ALISH Map. The subject 2-acre parcel has not been in active agricultural production and would not be taking high potential agricultural lands out of use nor will the requested use have an adverse impact on the overall agricultural activity in the area. The granting of the proposed community resource center, which includes an expanded community association center, open recreational area and volunteer fire station, would allow the establishment of non-agricultural uses on the property. Although open recreational areas are permitted within the State Land Use Agricultural district, this proposed use is included and reviewed as a part of the Association's comprehensive plan for the parcel. As one of the many large subdivisions that are not provided with County roads or services, community organizations become the viable means of providing for community needs. The proposed community operations would provide a central location where various community activities and protective services can be established in the best interest of the general welfare of the Fern Acres community. Based on the above, expanding the community office, establishing an open recreational area and allowing for a volunteer fire station would not displace any agricultural activity nor diminish the agricultural potential of the area and would not be contrary to the objectives of the State Land Use Law for the Agricultural district.

The desired uses will not adversely affect the surrounding properties. Surrounding uses include scattered residential and agricultural uses and vacant lands. There is an adjacent neighbor to the southeast who has expressed opposition to the request. There are single family dwellings located across the subject property to the west and scattered dwellings to the north. Other lands bordering the parcel are vacant. To minimize impacts to adjacent property owners, a minimum landscaping buffer 10 feet wide shall be established along all

other property borders. In addition, to alleviate and mitigate impacts from the proposed uses on an existing residence to the southeast, a total landscaping buffer 20 feet wide shall be established along that portion of the property where an existing dwelling is located. To minimize any noise impacts, from the proposed community resource center development upon the existing and future residents, use of the facilities during weeknights shall be permitted until 8:30 p.m. and until 7:00 p.m. on Saturdays and 5:00 p.m. on Sundays. To further address adjacent property concerns, fencing is to be established along boundaries adjacent to existing dwellings and when future dwellings are constructed. As office work is expected to have minimal impacts to surrounding properties and due to the size of the association structure, no limits are being placed on the number of employees.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and police and fire protection. Sewer will be by cesspool and water will be provided by a water catchment system. Access to the property is from South Kulani Road, a County road, unto Puhala Street, which has a pavement width of 30 feet within a 50-foot right-of-way. The subject property is located on Lehua Street, the second street on the left, which has an approximately 23-foot wide graveled roadway within a 50-foot right-of-way. Although the roads leading to the subject property are not paved to County standards, the proposed community and public safety benefits of the proposed uses outweigh the burden that unpaved roads place on public agencies. As the roads are private, maintenance is by the Fern Acres Community Association and not by the County. The advantage of constructing a volunteer fire station on the subject property is to increase the emergency response time to a growing community that is located a considerable distance (approximately 7 miles from Keaau) away from an existing fire station. Also, the construction of a community center building would allow for community activities to be held within the subdivision, in the immediate vicinity where the residents actually live. To minimize impacts generated by increased traffic a condition of approval shall be included to require all driveways and parking areas to be paved with chipseal, concrete or asphalt-concrete. The applicant is also encouraged to include as many extra parking spaces to accommodate community meetings and activities. Public agencies reviewing the request had no specific objections to the proposal.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The fact that this subdivision was created without adequate infrastructure is a tremendous burden on the County. There is a definite need for the proposed uses. The efforts of this community to take action and assume responsibility to increase their public safety needs through the construction of a volunteer fire station is laudable. By expanding the office into a community center, the Association would also have a place where meetings and activities can be held and where a sense of "community" can be fostered. In addition, creating the space for an open recreational center on the parcel would further allow for community gatherings and activities.

The land upon which the proposed use is sought is suited for the uses permitted within the district; however, the proposed use will not interfere with permitted uses. Although, the lands are zoned for agricultural uses, the proposed community association center, volunteer fire station and open recreational area and related improvements will be used by the existing residents. The community resource center will essentially support existing and future community development by providing a much needed community and

public safety services. The center would take one parcel out of the 1,976 existing lots in Fern Acres out of potential agricultural uses.

The proposed uses will not substantially alter or change the essential character of the land and the present use. The subject property is approximately two acres in size with about three-fourths of the land cleared. There is an existing 320-square foot structure presently used as the community association office. There are no agricultural uses on the subject property and, as such, the establishment of the proposed community uses will not displace agricultural uses.

The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The proposed use is consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- * Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- * The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Public Facilities

- * 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.

The General Plan Land Use Pattern Allocation Guide (LUPAG) map designates the area for Orchards. The soils are classified "E" or "Very Poor" and the lands under ALISH system is unclassified. The subject property has not been used for agricultural purposes and would not take significant lands out of agricultural use.

Based on the above considerations, a community association center, a volunteer fire station, open recreational area and related improvements in the Fern Acres Subdivision are 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.

Due to the expanded uses, all previous eight (8) conditions of Special Permit No. 699 are hereby rescinded and replaced with the following new conditions (bracketed material to be deleted and underscored to be added). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

- [1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.

Original
Conditions
of Permit
deleted &
replaced

2. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify the structure, graveled parking area and landscaping associated with the association office.
 3. Construction of the community association office and related improvements shall commence within one year from the date of Final Plan Approval and shall be completed within one year thereafter.
 4. Hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday.
 5. The office shall be staffed by no more than one (1) worker. No group activities shall be led at the office, such as membership meetings or fundraisers.
 6. Comply with all other applicable laws, rules, regulations and requirements of the Department of Health, Department of Public Works, and other relevant State and County agencies.
 7. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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 complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.
 8. An 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 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). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.]
- New Conditions of Permit*
1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
 2. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of the permit.
 3. Final Plan Approval shall be secured from the Planning Director for the community association center, volunteer fire station, and recreational structures. Plans shall identify

structures, fire protection measures, paved parking stalls and paved driveway (chip seal, concrete or asphalt concrete), and landscaping buffer associated with the proposed uses. Parking shall comply with the requirements of Chapter 25 (Zoning Code). Detailed landscaping plans shall include a minimum 10-foot wide landscaping buffer in the form of trees and shrubbery along all perimeters of the subject property. A 20-foot wide landscaping buffer shall be established along the border where there is an existing dwelling. Additional landscaping as needed shall be determined during Plan Approval review. Plans shall also indicate appropriate fencing to be established along property boundaries adjacent to existing dwellings and when future dwellings are constructed.

4. All construction of the proposed community resource center and related improvements shall be completed within ten years from the effective date of this special permit.
5. The hours of operation for the community center shall be limited to 8:00 a.m. to 8:30 p.m. on weekdays, until 7:00 p.m. on Saturdays and until 5:00 p.m. on Sundays.
6. The subject property shall not be used as a baseyard; and shall not be used to store road maintenance equipment and related materials nor be used for stockpiling materials.
7. Should any unidentified sites or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
8. Prior to securing a certificate of occupancy for any portion of the development, and upon final inspection of the property by the Planning Department, all landscaping and appropriate fencing shall be in place.
9. Upon compliance with applicable conditions of approval, and prior to the opening of any portion of the development or any related improvements; including, the installation of fences when a new dwelling is constructed, the applicant shall provide, in writing, a status report to the Planning Director.
10. An 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 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.

Charles Oliver, President
Fern Acres Community Association
Page 7

- 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).

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 feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Edward E. Crook, Chairman
Planning Commission

AK:syw

LFernA01.PC

cc: Honorable Stephen K. Yamashiro, Mayor
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources