



Planning Commission

Larry S. Tanimoto
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

August 8, 1990

Mr. Richard Flint, President
HOVE Road Maintenance Corp.
P. O. Box 6227
Capt. Cook, HI 96704

Dear Mr. Flint:

Special Permit Application(90-18)
Tax Map Key: 9-2-20:69, 70, 71 & 72

The Planning Commission at its duly held public hearing on July 26, 1990, voted to approve your application, Special Permit No. 740, to allow the establishment of a vehicle maintenance facility and office on 4 acres of land situated within the State Land Use Agricultural District at Hawaiian Ocean View Estates, Kahuku, Ka'u, 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 subject property is situated within the State Land Use Agricultural District. The Agricultural District not only includes lands with a high potential for agricultural uses, but also areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics. The property is located in an area of fairly recent Aa lava flow. The soils of the property are designated as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The land is classified as "Existing Urban Development" by the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) map. Although it is possible that some agricultural activities

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may be conducted on the subject property, it is determined that approval of the request would not be contrary to the objectives of the State Land Use Law, given the low agricultural potential for the subject area. Furthermore, the establishment of the proposed use will not significantly affect, or be detrimental to, the agricultural industry in the district.

The desired use will not adversely affect the surrounding properties. The surrounding properties are currently vacant of use, although there is a potential for residential and agricultural development on the surrounding lands. The Department of Health has stated that noise associated with the maintenance building is a concern. The subject property is of sufficient size (4 acres) to allow adequate setbacks and landscaping buffers to mitigate potential visual, noise, and dust impacts. These concerns can be addressed through conditions of approval and the Plan Approval process.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. The HOVE subdivision is served by 157 miles of private roads. The proposed improvements are intended to provide the necessary road maintenance support facilities to serve the residents of the subdivision. All essential services will be provided by the applicant. No objections to the granting of this permit were received from agencies providing services in the region.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Approximately 12,580 lots were created in the HOVE area prior to establishment of current regulations. Roadways are private, substandard roads which are maintained entirely by the residents of the area. Increasing residential development has intensified road use and the need for support facilities.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. As previously mentioned, the property is located in an area of fairly recent Aa lava flow. The soils of the property are designated as Very Poor for agricultural productivity.

The use will not substantially alter or change the essential character of the land and the present use.

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Establishment of setbacks and landscaping buffers will prevent substantial alteration of the character of the land.

The request is not contrary to the General Plan. The Hawaii County Zoning Code allows community, public, and public service buildings in any zoned district, provided they conform to the General Plan. The proposed use is consistent with the following goals, policies, and standards of the General Plan:

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- * Provide a transportation system whereby people and goods can move efficiently, safely, comfortably and economically.
- * The improvement of transportation service shall be encouraged.

Based on the above considerations, it is determined that establishment of a vehicle maintenance facility and 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 and Regulations.

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 approval of the consolidation of the subject properties into one lot shall be secured within one year of the effective date of this permit.
3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of consolidation approval. 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 structures, landscaping buffers along all boundaries of the property, and parking areas associated with the office and vehicle maintenance facility.

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4. Construction of the office, vehicle maintenance building, and related improvements shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two years thereafter.
5. Comply with all other laws, rules, regulations and requirements of State and County agencies.
6. 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.
7. 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 shall initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

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

bcc: Plan Approval Section



County of Hawai'i

PLANNING COMMISSION

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

June 10, 2008

Ms. Meleana Smith
HOVE Road Maintenance Corporation
525 Lotus Blossom Lane, Suite 1011
Ocean View, HI 96737

Dear Ms. Smith:

Special Permit (SPP 740)
Applicant: HOVE Road Maintenance Corporation
Request: Include Additional 6 Acres, Construct New Equipment Storage
Building, and New Office Building
Tax Map Key: 9-2-20:41-46 and 69

The Planning Commission at its duly held public hearing on May 22, 2008, voted to approve the above-referenced request for an amendment to Special Permit No. 740 by increasing the area for the road maintenance facility and baseyard from 4 acres to approximately 10 acres, and adding an office building, storage building and related uses. The property is located on the northwest side of Aloha Boulevard between Lotus Blossom Lane and Lehua Lane in Hawaiian Ocean View Estates, Kahuku, Kau, Hawaii.

Approval of this request is based on the following:

The Hawaiian Ocean View Estates (HOVE) Road Maintenance Corporation is requesting an amendment to Special Permit No. 740 to increase the road maintenance facility and baseyard from 4 acres to approximately 10 acres, to add an office building, a storage building and related uses. The expanded area and uses are needed as a result of an increase in roadwork, which resulted from an increase of residents moving to the subdivision.

Special Permit No. 740 was approved on July 26, 1990 to allow the establishment of a vehicle maintenance facility and office on 4 acres of land of land. The applicant constructed the maintenance building in 1992, but did not construct the office building.

The HOVE Road Maintenance Corporation is currently renting an office in the Ocean View Town Center and intends to relocate to the new office facility.

The entire facility will consist of the existing permitted area (4.005 acres), structures and uses, and the expanded area (6.005 acres), structures and uses. The existing structures and uses include a 1,860 square foot maintenance building, cinder holding area, vehicle storage area and rock walls. The expanded amended area will increase the land area to 10.012 acres, will add a 1,920 square foot office building and a 1,980 square foot vehicle storage building, and will move the cinder holding area to the new area and add a base course holding area and chip seal holding area to the original permitted area.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended

The proposed use is an unusual and reasonable use of land situated within the 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 Agricultural district. The proposed request will allow an increase in land area and add several structures & uses to the road maintenance facility, which will benefit the residents of the Hawaiian Ocean View Estates Subdivision. It will be located on 10.012-acre property, which consists of Aa lava. Based on the benefits it will provide to the community and the poor soil conditions for agricultural use of the land, the subject request is considered an unusual and reasonable use of agricultural land.

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 for those uses to which they are best suited in the interest of the public 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 property is classified as "E" or "Very Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The soil consists of Aa lava. The use will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. Therefore, the proposed use will not

adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous discussion listed above, mainly because the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands that is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The surrounding properties are similarly zoned A-1a and consist of one acre parcels that are mainly vacant, with some scattered residential dwellings. The proposed use will not adversely affect surrounding properties, as they are mainly vacant. A condition of approval for Special Permit No. 740 required that the applicant secure Final Plan Approval and place landscaping buffers along all boundaries of the property to minimize negative impacts to surrounding properties. Additionally, a condition of Final Plan Approval requires the applicant to utilize appropriate dust control measures to assure that no adverse impacts are affecting the adjoining properties. Conditions of approval for this amendment will be added to require the applicant to landscape and implement appropriate dust control measures for the added 6-acre area. Based on the above information, the applicant has met this criterion.

(C) Such 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 project site is from Lehua Lane, which is a private roadway that has an 18-foot pavement width within a 40-foot right-of-way and from Aloha Boulevard, which is a private roadway that has a 22-foot width within a 60-foot right-of-way. Water will be made available from private water catchment systems. Wastewater will be disposed of into an approved septic system. Telephone and electrical services are available to the site. Based on the above, the requested use will not burden public agencies to provide additional services and the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS

Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and a majority of the surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, various "non-agricultural" services may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The soil type for the property and surrounding area is Aa Lava. The project site is classified as "E" or "Very Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The land and surrounding area is not of high agricultural potential and has very limited agricultural use. Based on the above information, the applicant has met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The expansion of the road maintenance facility from approximately 4 acres to approximately 10 acres of land will change the present use of the added 6 acres of land, which is presently vacant of structures and uses, but the change will not be substantial. The area will be landscaped to minimize impacts of the added area. The proposed request will not substantially change the essential character of the land in this area, which has been the location of the road maintenance facility since 1990. The majority of the surrounding area is comprised of vacant land with several scattered dwellings. Therefore, based on the above discussion, the applicant has met this criterion.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is located in area identified as Rural in the General Plan. 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 9,000-square feet to two 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 request is consistent with the Land Use element of the General Plan which is to "Designate and allocate lands 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.”

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The project site is not proximate to the shoreline and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Although there were no professional surveys conducted of the site, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the property. The area has not been identified as a significant botanical or biological habitat. Presently, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of known valued cultural, historical or native resources in the area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

In view of the recent Hawaii 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 kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the permit area: No archaeological survey of the area was conducted as the entire project area has been cleared. In a letter dated January 29, 2008, the Department of Land and Natural Resources-State Historic Preservation Division issued a “no-effect” letter stating that DLNR-SHPD determined that no historic properties will be affected by this undertaking because previous grubbing/grading has altered the land.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline, and no flora or fauna that might be the subject of gathering are likely to be on site, therefore Hawaiian gathering and fishing rights is not an issue. Additionally, given the extent of land disturbing, it is highly unlikely that significant historic sites would be found on the subject property.

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 and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-SHPD.

Based on the above considerations, the approval of the request would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions (material to be added is underscored and material to be deleted is bracketed):

- ~~1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.~~
- ~~2. Final approval of the consolidation of the subject properties into one shall be secured within one year of the effective date of this permit.~~
- ~~3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of consolidation approval. 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 structures, landscaping buffers along all boundaries of the property, and parking areas associated with the office and vehicle maintenance facility.~~
- ~~4. Construction of the office, vehicle maintenance building, and related improvements shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two years thereafter.~~
- ~~5. Comply with all other laws, rules, regulations and requirements of State and County agencies.~~
- ~~6. 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.~~
7. 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 shall initiate procedures to revoke the permit.]~~

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of the amended road maintenance facility and related improvements shall be completed within five (5) years from the effective date of this 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 Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all proposed structures, fire protection measures, paved driveway access and paved parking stalls, and other improvements associated with the proposed use in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) standards for the Light Industrial (ML) zone adjoining a Single-Family Residential (RS) zone.
3. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of a construction permit. The recommended drainage improvements, if any, shall be constructed, meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
4. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
5. The applicant shall implement appropriate dust control measures to assure that no adverse impacts affect the adjoining properties.
6. A Solid Waste Management Plan shall be prepared and submitted for approval to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
7. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigative measures have been taken.

8. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
9. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this amendment. 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 with and the Planning Director acknowledges that further reports are not required
10. 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 applicants, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - 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).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

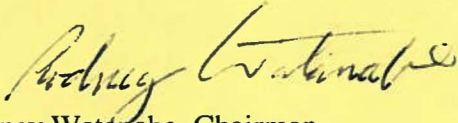
Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Ms. Meleana Smith
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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

Lhovespp740PC01

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu