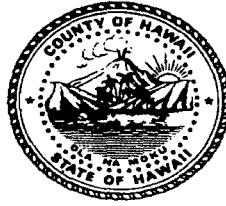


Harry Kim
Mayor



Gregory Henkel, Chair
Joseph Clarkson, Vice Chair
Donn Dela Cruz
Donald Ikeda
Myles Miyasato

County of Hawai'i

WINDWARD PLANNING COMMISSION

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

MAY 11 2017

Ms. Jill D. Raznov, Esq.
Law Offices of Yeh & Moore
85 W. Lanikāula Street
Hilo, HI 96720-4199

Dear Ms. Raznov:

SUBJECT: Special Permit No. 966 (Docket No. SPP 91-000009)
Applicant: Hale Ohu Bed & Breakfast, LLC
Request: Amend Special Permit No. 966 from a Six-Room Inn to a Five-Bedroom Bed & Breakfast and Amendments to Condition Nos. 3, 4, and 6
Tax Map Key: 1-9-003:010, 020, and 021

The Windward Planning Commission, at its duly held public hearing on May 4, 2017, voted to approve the above-referenced request to amend Special Permit No. 966 from a six (6) bedroom Inn to a five (5) bedroom Bed & Breakfast and the deletion of Condition Nos. 3 (Final Plan Approval), 4 (Bedroom Limit) & 6 (Final Status Report) related to the previous Inn use. The project site is located along the north side of Old Volcano Road, approximately 390 feet east of its intersection with Wright Road, Ola'a Summer Lots, Volcano, Puna, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of Section 25-4-7 of Chapter 25, Hawai'i County Code, (Zoning Code), relating to bed and breakfast establishments.
3. The applicant shall secure all required building permits for the third bedroom and bathroom in the 'Garden Suites' dwelling from the Department of Public Works-Building Division, within one (1) year of the effective date of this amended permit.

Hawai'i County is an Equal Opportunity Provider and Employer

MAY 11 2017

4. The bed and breakfast operation shall be limited to the use of five (5) bedrooms and a maximum of 10 guests per day.
5. The applicant shall provide bottled water for the guests of the bed and breakfast operation.
6. The applicant shall comply with all other applicable laws, rules, regulations and requirements of affected government agencies.
7. An initial extension of time for the performance of conditions within this permit 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, successor, 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).

Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

[Note: Ramseyer version available upon request.]

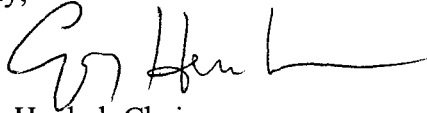
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Report.

Ms. Jill D. Raznov, Esq.
Law Offices of Yeh & Moore
Page 3

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory Henkel". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gregory Henkel, Chairman
Windward Planning Commission

LHaleohub&bamendSPP966wpc
Enclosure: PC Findings Report

cc w/enclosures: Hale Ohu Bed & Breakfast, LLC
 Department of Public Works
 Department of Water Supply
 County Real Property Tax Division - Hilo
 Department of Land & Natural Resources - HPD
 State Land Use Commission
 GIS Section

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

HALE ‘OHU BED & BREAKFAST, LLC (FORMERLY MORSE)
SPECIAL PERMIT NO. 966 AMENDMENT

Based on the following considerations, an amendment to Special Permit No. 966 from a six (6)-room Inn to a five (5)-bedroom Bed & Breakfast and deletion of Condition Nos. 3 (Final Plan Approval), 4 (Bedroom Limit) & 6 (Final Status Report) related to the previous Inn use is approved.

HALE OHU BED & BREAKFAST LLC has submitted a request to amend Special Permit No. 966 from a six (6)-room Inn to a five (5)-bedroom Bed & Breakfast and deletion of Condition Nos. 3 (Final Plan Approval), 4 (Bedroom Limit) & 6 (Final Status Report) related to the previous Inn use. Special Permit No. 966 was originally approved to allow the establishment of a six (6)-room Inn and related improvements on 4.465 acres of land situated within the Agricultural-1 acre (A-1a) zoning district. The subject properties are located along the north side of Old Volcano Road, approximately 390 feet east of its intersection with Wright Road, Ola‘a Summer Lots, Volcano, Puna, Hawai‘i, TMKs: 1-9-003:010, 020 and 021.

Special Permit No. 966 approved the development of a six (6)-room Inn between two structures on the subject properties (three rooms in the ‘Garden Suites’ structure and three rooms in the Lyman ‘Mountain House’). The applicant is requesting a change to a five (5)-bedroom B&B operation as they intend to cease the use of the Lyman ‘Mountain House’ as an Inn so that they can utilize this dwelling as their residence. The applicant is proposing to utilize existing ‘Garden Suites’ dwelling for the B&B operation. The ‘Garden Suites’ currently has three bedrooms, each with separate full bathrooms. This dwelling is currently permitted for only two (2) bedrooms and two (2) baths. The applicant plans to seek a building permit for the as-built third bedroom and third bath within a reasonable time from the issuance of the amended permit. In addition, the applicant desires to expand the B&B in the future to include two (2) additional bedrooms in a separate structure on the site of an existing, two (2)-car detached open carport, however no concrete expansion plans exist at this time. The owners/operators do not plan to use the existing dwelling (the Lyman ‘Mountain House’), where they reside, as part of a B&B at any time. The maximum number of guests will not exceed ten (10) per day. The applicant will comply with all DOH rules and regulations for food safety and plan to provide continental breakfast meals, consisting of such foods as: muffins/pastries, cereal/granola, fresh fruits, coffee, teas and juices. These items will be delivered to B&B guests by the owner/operator. Finally, the applicant plans to retain a water delivery service for the B&B to provide bottled water.

Granting of the amendment request would not be contrary to the original reasons for granting the permit and the request would not be contrary to the General Plan or the Zoning Code.

Special Permit No. 966 was approved to allow the development of a six (6)-room Inn within two structures on the subject properties (three rooms in the ‘Garden Suites’ structure and three rooms in the Lyman ‘Mountain House’) on 4.465 acres of land situated within the Agricultural-1 acre (A-1a) zoning district. The applicant is requesting to amend Special Permit

No. 966 from a six (6)-room Inn to a five (5)-bedroom Bed & Breakfast and deletion of Condition No. 3 (Final Plan Approval), Condition No. 4 (Bedroom Limit) and Condition No. 6 (Final Status Report) related to the previous Inn use.

The proposed request is not contrary to the General Plan. The County General Plan Land Use Pattern Allocation Guide Map (LUPAG) designates this area for Intensive Agricultural which is characterized as lands not classified as Important Agricultural Land and include lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. The Inn has been in operation for over 30 years and much of the subject properties have been landscaped into a botanical garden. Additionally, the B&B operation will take place within an existing 'Garden Suites' dwelling, which currently has three (3) bedrooms, each with separate full bathrooms. This dwelling is currently permitted for only two (2) bedrooms and two (2) baths. The applicant plans to seek a building permit for the as-built third bedroom and third bath within a reasonable time from the issuance of the amended permit. This was added as a condition of approval of this amendment. Additionally, the applicant is proposing to expand the B&B in the future to include two (2) additional bedrooms in a separate structure on the site of an existing, two (2)-car detached open carport, therefore no additional agricultural land will be taken out of production.

The proposed change in use from an Inn to a B&B operation is consistent with the Zoning Code in that both uses can be approved via the Special Permit in properties within the State Land Use Agricultural District. The proposed use meets the standards for B&B establishments in the Zoning Code as it will be subordinate and clearly or customarily incidental to the principal use as a residence by its operators/owners and will not alter or be detrimental to the character of the surrounding area. The proposed use will be complimentary to the surrounding existing uses, as was the Inn under the existing Special Permit, and will reduce such use, being limited to five (5) bedrooms, with a maximum of ten (10) guests at any time, for compensation, for periods of less than thirty (30) days. The project also currently provides more than adequate on-site parking for guests. Conformance to the Zoning Code requirements for B&B operation is a condition of approval of this amendment.

Due to the proposed change in use from an Inn to a B&B operation, the applicant is requesting the deletion of Condition No. 3 (Final Plan Approval), Condition No. 4 (Bedroom Limit) and Condition No. 6 (Final Status Report) related to the previous Inn use.

Condition No. 3 of the existing Special Permit reads: "*Final Plan Approval shall be secured from the Planning Director within six (6) months from the effective date of this permit. Final Plan Approval shall be secured in accordance with the Zoning Code, Section 25-2-72 and 25-2-73. Plans shall identify existing and proposed structures, a minimum of seven (7) paved parking stalls (asphaltic-concrete, concrete or chip-seal), driveway, landscaping and fire protection measures associated with the proposed use.*" The previous owner failed to satisfy this condition, and in the interim, the Zoning Code, which formerly required Final Plan Approval for B&B operations was amended to remove this requirement, therefore the proposed change to a B&B use would not require Final Plan Approval under our current code. Additionally, exhibits attached to this amendment request satisfactorily identify, locate and depict all existing

structures, the driveway, parking areas, catchment tanks, identified trails and walking paths, paved areas, landscaping, and other associated uses, which would be required under Plan Approval. Based on the preceding, the Planning Director recommends approval of the request to delete this condition.

Condition No. 4 reads: *“The inn shall be limited to the use of six (6) bedrooms.”*

As the applicant is proposing to change the use to a five (5) bedroom B&B operation from the previous Inn use, this condition no longer applies. A condition of approval of this amendment limits the number of bedrooms in the B&B operation to five (5).

Condition No. 6 reads: *“A final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.”* The applicant is requesting that this Condition be deleted as unnecessary based on requested deletions of Condition No. 3 and Condition No. 4. Additionally, Condition No. 2, which required that Access easement rights over parcels 10 and 20 for the inn operation on parcels 10 and 21 be recorded at the Bureau of Conveyances was satisfied in 1997 (Document No. 97-121796).

The proposed amendment will not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

The proposed use is consistent with uses on surrounding properties, which include about a dozen mixed-type transient accommodations (including inns, B&B establishments, lodges and hotels), the Kilauea Lodge, two general stores, about a dozen restaurants and cafés, an art gallery/café, a hardware store, a gift store containing handcrafted items, a post office, and residences. The commercial core of Volcano Village is approximately 1,200 feet from the and the entrance to Volcano National Park is located a little more than two miles away from the subject properties.

The previous owners established and have operated the “My Island Inn” for approximately the last thirty (30) years without any complaints to the Planning Department about negative impacts to surrounding property owners. As stated above, it is one of over a dozen transient accommodations in the area servicing visitors of the National Park and Volcano Village. The Planning Department has received four (4) letters of support for the proposed project from three (3) surrounding property owners.

The ‘Garden Suites’ dwelling proposed for the B&B use is set back approximately 200 feet from Old Volcano Road and is screened from view of surrounding property owners by a densely forested landscape with a vacant Parcel 20 (also owned by the applicant), between the dwelling and the nearest neighbor to the west, and Parcel 21, which includes the applicant’s dwelling between the subject parcel and the closest neighbor to the east. Properties to the north are vacant, heavily forested State-owned properties. Based on the preceding, the proposed amendment will not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

The granting of the proposed amendment will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure.

Access to the property is from Old Volcano Road, which is a County maintained road with

a pavement width of 22 feet within a 40-foot right-of-way. The properties are accessed by a single gravel driveway, approximately 13 feet wide, originating on Parcel 10. This driveway meanders through Parcel 20, passes by a gravel overflow parking area located there, then continues back through to Parcel 10, and terminates at a paved (asphalt) parking area on Parcel 10, which contains seven (7) marked parking spaces. There is a 2 ½ foot wide concrete path, approximately 50 feet in length, connecting the asphalt parking area on Parcel 10 to the dwelling on Parcel 21.

The applicant is proposing to reduce the number of rentable rooms and by virtue of the B&B designation, limit the number of guests at any one time to ten (10) as required in the Zoning Code. Therefore the proposed change in use is not anticipated to generate any additional traffic during weekday peak hours of travel. Additionally, neither the Police Department nor the Department of Public Works Engineering Division had any concerns about increased traffic.

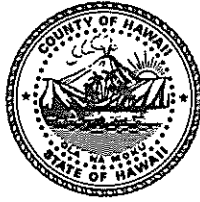
According to the Department of Water Supply (DWS), the proposed project area is not within the service limits of DWS' existing water system and that they cannot provide service. The applicant will make non-potable water available via three catchment tanks totaling approximately 15,000 gallons of capacity and bottled, potable water will be provided to guests of the B&B operation. The applicant will also be required to consult with the Fire Department to ensure compliance with fire protection requirements through the building permit process.

According to the State Department of Health (DOH), the applicant's existing wastewater system is adequate to serve the proposed project. All other utilities and services are available to the site.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The properties are not located in the Special Management Area and is not proximate to the shoreline; therefore it will not be impacted by coastal hazards and beach erosion. There is no record of a designated public access to the shoreline or mountain areas that traverses the properties and there is no evidence of any traditional and customary Native Hawaiian rights being practiced thereon. The State Historic Preservation Division (SHPD) issued a "no effect" letter on March 20, 1997 as part of the original Special Permit process, stating, "*Since the owners will not be altering the historic building to use as a bed and breakfast, we believe the permit will have no effect on historic resources...*" In addition, the applicant sent a "Request for No Effect Determination" letter to SHPD on December 22, 2016. As of this writing, the Planning Department has not received a response to this letter. The applicant intends to eliminate the use of the historic Lyman 'Mountain House' as a transient accommodation rental, and have no plans to alter the historic character of the dwelling. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

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
Z 095 323 900

JUN 05 1997

Mr. and Mrs. Gordon Morse
P.O. Box 100
Volcano, HI 96785

Dear Mr. and Mrs. Morse:

Special Permit Application (SPP 91-9)
Applicant: Gordon and Joann Morse
Request: Establish a Six-Room Inn
Tax Map Key: 1-9-3:10, 20 and 21

The Planning Commission at its duly held public hearing on May 22, 1997, voted to approve the above-referenced application. Special Permit No. 966 is hereby issued to establish a 6-room inn within two separate existing dwellings situated on approximately 4.46 acres of land situated within the State Land Use Agricultural District. The project area is located in Volcano Village, approximately 300 feet north of the Volcano Road-Lanihuli Road intersection, Olaa Summer Lots, Puna, Hawaii.

Approval of this request is based on the following:

The granting of this special permit will promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law Rules 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 of the State Land Use Law Rules and Regulations is to preserve or keep lands of high agricultural potential in agricultural use. The soils within the project site are classified "E" or Very Poor by the Land Study Bureau for agricultural productivity and the subject properties are noted as existing urban development under the ALISH Map system. The subject properties consist of three adjacent lots totaling approximately 4.465 acres. The existing two dwellings lie on parcels 10 and 21, with the driveway originating on parcel 10, meandering through parcel 20 and terminating at a paved parking lot on parcel 10. The applicant proposes to establish a six (6) room inn, to include 4 bedrooms in the main dwelling in which they reside in and two guest rooms in a separate dwelling located on the adjacent parcel. The parcels have been landscaped into a botanical garden and are surrounded by ohia forest. The applicants have been in operation for about 12 years. Based on the above, the applicant's request to establish an inn on the subject property will not

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displace a significant amount of land from agricultural activity nor diminish the agricultural potential of the area. Therefore, the request would not be contrary to the objectives of the State Land Use Law for the Agricultural District.

The proposed request is not contrary to the General Plan. The County General Plan Land Use Pattern Allocation Guide Map (LUPAG) designates this area for Intensive Agricultural. The applicants have been in operation for about 12 years and have landscaped the properties into a botanical garden. The proposed use is consistent with the following goals, policies and standards of the General Plan:

Economic Element

- * Provide residents with opportunities to improve their quality of life.
- * Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- * The County of Hawaii shall strive for diversity and stability in its economic system.
- * The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- * The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.

Land Use Element

- * Designate and allocate land uses 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.

The proposed use will not have any significant adverse effects on the surrounding properties. The subject property is located in the Volcano Village and easily accessed from Highway 11 onto the Old Volcano Road. It is located approximately 500 feet east of the Old Volcano Road/Wright Road intersection. Immediately surrounding the subject properties are scattered residences. The property is within 1,200 feet of the commercial core of Volcano Village. Within this core is the Kilauea Lodge, True Value Hardware Store, two general stores, art store, deli and a post office along the Old Volcano Road. Cooper Center (community center) is located on a large State-owned lot immediately to the northwest of the subject properties. The nearest approved bed and breakfast establishment within the Volcano Village is Chalet Kilauea which is located on Wright Road about one mile from the Old Volcano/Wright Road intersection. It is not anticipated that the inn will have a significant adverse effect on the surrounding properties.

The proposed use will not substantially alter or change the essential character of the land and the present use. All structures to be used for the inn have been constructed and the properties have been used as an inn for around 12 years. No additional construction is anticipated to take place. The subject properties presently have an existing 3-story dwelling on parcel 21 and another dwelling (old maids quarters and 2 guest rooms) on parcel 10. The parking area is paved and the grounds have been landscaped with a botanical flower garden. The driveway leading to the parking area is graveled and approximately 13 feet wide. The existing 3 lots may remain as single lots as the applicants own all three lots; however, driveway easement documents over parcels 10 and 20 for the inn shall be submitted. Also with the special permit, there is greater flexibility in establishing this use, thereby, allowing for separate structures and allowing the applicant to reside on a separate property.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection. Water will be provided by a private catchment system. Approximately 45,000 gallons of water is available from five tanks. One of the tanks is a closed water tank system for hauled water. The Department of Health will enforce wastewater disposal regulations and drinking water regulations and the Fire Department will enforce fire protection requirements. A minimum of seven (7) paved parking stalls shall be required to accommodate guests and hired help. Access to the subject property is from Highway 11 onto the Old Volcano Road. The Old Volcano Road has an approximate pavement width of 24 feet. Based on the existing roadway improvements, it is not anticipated that the proposed use will have an adverse impact on traffic and safety along this roadway. Original concerns expressed at the Planning Commission public hearing in 1981 centered around establishing a bed and breakfast in a separate dwelling. Subsequent to that time, variations of a bed and breakfast operation, such as an inn have been approved through the issuance of a Special Permit. These variations allow for more than five (5) bedrooms and separate structures. Other essential utilities and services are or will be made available to the site. Agencies had no specific concerns or objections to the operations.

The land on which the proposed use is sought is unsuited for the uses permitted within the district. The subject property is suitable for agricultural activities, however, has not been actively used for agricultural purposes. Therefore, no significant amount of land will be removed from the agricultural land inventory.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The proposed inn, like bed and breakfast accommodations, are a part of a worldwide trend towards providing alternative lodging sites in rural and agricultural areas such as this particular location. They are becoming increasingly popular for visitors who seek a more localized and authentic experience in a home-type setting. Such small-scale development is consistent with the social and physical character of a rural-agricultural area and is in keeping the economic goals of the County. The subject operations are located within close proximity to the Hawaii Volcanoes National Park and may be used to provide accommodations for visitors.

The proposed use will not have an adverse effect on archaeological and flora and fauna resources within the area. The subject property has already been disturbed

and landscaped into a garden; therefore, archaeological and flora and fauna resources are not expected to be affected.

Based on the above considerations, the establishment of a six-bedroom inn 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.

Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.


1. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Access easement rights over parcels 10 and 20 for the inn operation on parcels 10 and 21 shall be recorded at the Bureau of Conveyances. Easement documents shall be submitted for review and approval by the Planning Director prior to the issuance of Final Plan Approval. A copy, likewise, as executed and recorded at the Bureau of Conveyances, shall be submitted to the Planning Director within one (1) year from the effective date of this permit.
3. Final Plan Approval shall be secured from the Planning Director within six (6) months from the effective date of this permit. Final Plan Approval shall be secured in accordance with the Zoning Code, Section 25-2-72 and 25-2-73. Plans shall identify existing and proposed structures, a minimum of seven (7) paved parking stalls (asphaltic-concrete, concrete or chip-seal), driveway, landscaping and fire protection measures associated with the proposed use.
4. The inn shall be limited to the use of six (6) bedrooms.
5. Comply with all applicable laws, rules and regulations of the affected agencies for this project, including the Department of Health and Department of Public Works.
6. A final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
7. An initial extension of time for the performance of conditions within the permit 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 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).

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,



Kevin M. Balog, Chairman
Planning Commission

AK:syw

LMorse01.PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu