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PLANNING DEPARTMENT
COUNTY OF HAWAII

Contested Case Hearing Officer

BEFORE THE PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of the Application of)	
)	USE PERMIT NO. 106
AINALOA DEVELOPMENT CORPORATION)	SPECIAL PERMIT NO. 827
)	FINDINGS OF FACT, CONCLUSIONS OF
To Amend Conditions of Use Permit No. 106)	LAW AND HEARING OFFICER'S
and Special Permit No. 827, Which Allowed)	RECOMMENDATION; CERTIFICATE OF
the Development of a Golf Course, Golf)	SERVICE
Clubhouse, and Related Improvements on)	
Lands within the State Land Use Agricultural)	Hearing Date: July 29, 2004
District and County's Agricultural 1-acre)	Hearing Officer: Colin L. Love
Zoned District at Keaau, Puna, Hawaii,)	
TMK:1-6-04:21 and 57.)	
)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND HEARING OFFICER'S RECOMMENDATION**

FINDINGS OF FACT

This matter came on for contested case hearing before the Hearing Officer, Colin L. Love, on July 29, 2004, with Applicant, Ainaloa Development Corporation (hereinafter "Ainaloa"), being represented by its counsel Sandra P. Song and with Sidney Fuke present on behalf of Ainaloa; the County of Hawaii Planning Department (hereinafter "Department") being represented by its counsel Bobby Jean Leithhead-Todd and Norman Hayashi present on behalf of the Department; and Intervenor Ole' Fulks (hereinafter "Fulks") present and representing himself. After considering all of the evidence presented at the hearing, the Hearing Officer makes the following findings of facts:

FINDINGS OF FACT

If it is determined that any of the following Findings of Fact should have been set forth as Conclusions of Law, they shall be deemed as such and if it is determined that any of the following Conclusions of Law should be deemed Findings of Fact they shall be deemed as such.

1. This matter involves an application by Ainaloa to amend certain conditions in Special Permit No. 827 and Use Permit No. 106 which authorized the development of a golf course, golf clubhouse, recreational facilities and related improvements on Ainaloa's property situated at the extreme northwestern (mauka) end of Ainaloa Subdivision, in Keaau, District of Puna, County and State of Hawaii, designated by State of Hawaii Tax Map Key Nos. (3) 1-6-004-021 and 057.

Use Permit No. 106

2. Chapter 25, Division 6, Section 25-2-60 to 25-2-67 is the portion of the Hawaii County Code that addresses Use Permits.

3. Section 25-2-60 of the Hawaii County Code says:

"Use permits are permits for certain permitted uses in zoning districts which require special attention to insure that uses will neither unduly burden public agencies to provide public services nor cause substantial adverse impacts upon the surrounding community".

4. Section 25-2-64(b) of the Hawaii County Code says:

In approving any use permit application, the commission may issue the approval subject to conditions, including hours of daily operation and terms of the use permit. The conditions imposed by the commission shall bear a reasonable relationship to the use permit granted."

5. Rule 7 of the Planning Commission Rules of Practice and Procedures (PCRPP) sets forth the rules for Use Permits.

6. Use Permit No. 106, issued on November 4, 1992 by the Hawaii County Planning Commission (hereinafter "Commission"), allowed the development of an 18-hole golf course, golf clubhouse and related improvements on Ainaloa's 200 acres of land, zoned Agricultural, with a minimum lot size of one-acre (A-1a). Conditions 3, 6, 7 and 9 of this permit are involved in the subject application and provide:

- “3. Final Plan Approval for the proposed golf course and related improvements shall be secured from the Planning Department within 18 months from the effective date of the 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 (45) days prior to the date by which plan approval must be secured. Plans shall identify all structures, landscaping, which shall include a 40-foot perimeter landscaping buffer, and paved parking stalls associated with the proposed development.
6. The Keaau-Pahoa Road/Ainaloa Boulevard intersection shall be fully channelized meeting with the approval of the State Department of Transportation-Highways Division and/or the County Department of Public Works, prior to the issuance of the certificate of occupancy or the opening of the golf course, whichever occurs first.
7. Ainaloa Boulevard from Keaau-Pahoa Road to the entrance of the project site shall be upgraded to County dedicable standards meeting with approval of the Department of Public Works. Stop signs and street lights shall also be installed at all lateral roads fronting Ainaloa Boulevard with an existing power pole. In addition, for pedestrian safety, the applicant shall extend the pavement width within the existing right-of-way of Ainaloa Boulevard, including the striping or installing of a rolled curb. All roadway improvements to Ainaloa Boulevard shall be completed prior to the issuance of the certificate of occupancy or opening of the golf course, whichever occurs first.
9. To ensure that the goals and policies of the General plan are implemented, the Planning Director shall formulate a community benefit assessment program which shall include the following: (A) a program for public play at reasonable costs, (B) a program for reasonable access to the proposed recreational facilities by Ainaloa Subdivision residents, (C) a standpipe, providing water for potable and firefighting purposes, to be located on a park site owned by the Ainaloa Community Association, (D) funds for/or a water tanker and an asphalt paver to be donated to the Ainaloa Community Association, (E) bus shelters to be constructed at different locations along Ainaloa Boulevard within the existing right-of-way, and shall not preclude other

community benefit assessments as may be approved by the Planning Director. The community benefit assessments as outlined in the developer's letter of October 2, 1992 to the Planning Director, shall also be provided. Such community benefits shall be implemented prior to the official opening of the golf course."

7. Special Permit No. 827, also issued on November 4, 1992 by the Commission, allowed an expanded golf clubhouse, recreational facilities and related improvements in conjunction with Ainaloa's golf course. Condition 2 of this permit is involved in the subject application and provides:

"2. Plans for the proposed expanded clubhouse and recreational facilities shall be submitted concurrently with plans submitted for Final Plan Approval review for the proposed golf course and related improvements. 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. In the design and review of any improvements, due consideration shall entail the minimization of noise and visual impacts through appropriate siting, height, bulk, color schemes, and landscaping. Plans shall identify all structures, landscaping, and paved parking stalls associated with the proposed development."

8. Ainaloa planned to fund its golf course project, in 1992 through a membership program with Japanese nationals. During the late 1980's and early 1990's golf course memberships in Japan were sold and traded similar to stock trading. Thus, the sale of golf course memberships would have provided Ainaloa with substantial funds for its improvements.

9. In order to obtain approval for its project Ainaloa offered substantial community benefits to the Ainaloa Community Association.

10. In 1992, Bob Awana, President of Ainaloa Development Corporation estimated cost of community benefits offered by Ainaloa as follows:

	(in millions)
a. Upgrade Ainaloa Boulevard	-\$6.100
b. Channelized intersection	-\$.300
c. Street lights	-\$.150

d. Potable water line and standpipe	-\$.050
e. Water truck	-\$.075
f. Road paver	-\$.125
TOTAL	\$6.800

11. The foregoing benefits did not include the value of reduced green fees for local residents and the use of other amenities.

12. The economics are not the same today as they were in the early 1990s, and the concept of financing large golf projects with membership certificates from Japanese nationals was short lived.

13. Ainaloa contends that it can not afford the cost of the community benefits offered in 1992, and it now want to amend or delete some of the conditions to Use Permit No. 106.

8. Neither Chapter 25, Division 6 of the Hawaii County Code nor Rule 7 of PCRPP address the amendment or deletion of conditions in Use Permits.

9. The specific amendments being requested by Ainaloa are:

(a) An amendment to Condition No. 3 of Use Permit No. 106 to allow a five-year time extension to obtain final plan approval from the Department for the golf course improvements;

(b) Deletion of Condition No. 6 of Use Permit No. 106, which requires channelizing the Keaau-Paho Road/Ainaloa Boulevard intersection;

(c) Amendment of Condition No. 7 of Use Permit No. 106 to contribute \$1,000,000 to the County of Hawaii for improvements to Ainaloa Boulevard in lieu of constructing the Ainaloa Boulevard improvements;

(d) Amendment to Condition No. 9 of Use Permit No. 106 to delete the requirements of purchasing an asphalt paver and water tanker, and constructing bus shelters for the Ainaloa Community Association; and

(e) An amendment to Condition No. 2 of Special Permit No. 827 to allow a five-year time extension to obtain final plan approval from the Department for the expanded golf clubhouse and recreational improvements.

Condition No. 3 of Use Permit No. 106 and Condition No. 2 of Special Permit 827

16. The Department recommends that the request by Ainaloa to amend Conditions

Nos. 3 of Use Permit No 106, and Condition No. 2 of Special Permit No. 827 be approved if the amendments to Conditions No. 7 and No. 9 of Use Permit No. 106 are denied.

17. Fulks is a party to these proceedings by virtue of the Petition for Standing in Contested Case Hearing that he filed with the Planning Department of the County of Hawaii on or about January 9, 2004.

18. Fulks has no objection to the request by Ainaloa to amend Conditions Nos. 3 of Use Permit No 106.

19. Condition 19 of Use Permit No. 106 provides for an initial extension of time for the performance of permit conditions upon the following circumstances:

“19. An initial extension of the time for the performance of Conditions within the permit may be granted by the Planning Director upon the following circumstances: a) the nonperformance 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; (emphasis added)* 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).”

20. This is not an initial extension of the time for the performance of conditions within the permit.

21. Prior to the subject request, Ainaloa obtained extensions for compliance with the time requirement for obtaining final plan approval for its golf course project on two separate occasions. The first request was submitted on March 14, 1994, and approved by the Planning Director on April 25, 1994, granting a time extension until November 12, 1995. The second, was submitted on September 18, 1998, and approved by the Hawaii County Planning Commission (hereinafter “Commission”) on November 20, 1998, granting a time extension until December 7, 2003.

22. The first two time extensions were approved because of the downturn of global

financial and economic conditions and the appeal of Special Permit No. 827 and Use Permit No. 106 filed by a neighboring property owner. The appeal, initially filed in December, 1992, was finally resolved by Disposition Order of the Hawaii Supreme Court on October 14, 1997.

23. The Planning Commission, in its decision of November 20, 1998, specifically found that the reasons for the delay (being the appeal and the recent global financial and economic conditions) could not have been foreseen and were beyond the control of Ainaloa. It also found that the time condition amendment would not be contrary to the General Plan, the Zoning Code, or the original reasons for granting the Use Permit and Special Permit.

24. Since the last time extension issued by the Commission, there has not been a strong global economic recovery.

25. Ainaloa's could not have foreseen recent global and financial conditions and its inability to develop its golf course within the stipulated period was a result of circumstances beyond Ainaloa's control and the delay was not attributable to Ainaloa's fault or negligence.

26. There have been no changes in the General Plan affecting Ainaloa's property or the immediately surrounding area since the Use Permit and Special Permit were issued in 1992. Likewise all improvements for the golf course project must comply with the prevailing requirements of the Zoning Code standards such as setback, height, parking and landscaping. There has been no evidence presented to show that the proposed time extension would be contrary to the General Plan or Zoning Code.

27. The original reasons for granting Ainaloa Use Permit No. 106 in 1992 were:

"The establishment of an 18-hole golf course and related facilities within the County's Agricultural-1 acre (A-1a) zoned district will not be inconsistent with the general purpose of that zoned district, the intent and purpose of the Zoning Code, and the General Plan, provided adequate mitigating conditions are met.

The subject request will also provide a form of perpetual open space, thus, maintaining the current open character of the adjacent surrounding area with its natural and scenic qualities. The proposed development would, therefore, be consistent with the policies of the Recreation and Open Space elements of the General Plan which state that recreational facilities in the County shall reflect the natural, historic, and cultural character of the area, and that the recreational use should be compatible with the adjacent areas. The Department of Land and Natural Resources concurred with the findings

of the applicant's archaeological inventory survey that all sites in the project area were recorded and only two archaeological sites were identified. Both sites were determined to be "no longer significant", and the proposed development will have "no effect" on historic sites.

The granting of this proposal would complement the goals of the General Plan's Recreation element which states to "Provide a diversity of environments for active and passive pursuits" and to "Provide a wide variety of recreational opportunities..."

As a condition of this approval would be the formulation of a community benefit assessment program by the Planning Director prior to Final Plan Approval of the golf course. It is felt that this provision would be consonant with the policy of the Land Use Element that states "The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment." A community benefit assessment program would also encompass a wide range of community needs rather than the limited recreational needs determination previously required.

Golf courses are permitted uses within the State Land Use Agricultural District provided that the affected lands are not classified either "A" and "B" soils by the Land Study Bureau. The Land Study Bureau's Overall Master Productivity rating for agricultural use of the subject property is Class "E" or very poor; therefore, consideration of a golf course within these State land use parameters is permissible.

The granting of the proposed use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties. The character of land use in the immediate area is open space with clustered residential homesites. Adjacent to the project site are the agricultural subdivisions of Ainaloa to the southeast, Hawaiian Acres to the west, Tiki Gardens to the east, and Orchidland Estates to the north. As previously mentioned, the open nature of the proposed golf course will complement the rural character of the community. The proposed clubhouse and wastewater treatment plant will be centrally located on the property and screened with berms and landscaping to minimize adverse visual impacts to surrounding properties. Existing vegetation would be retained as much as possible between fairways. In addition, the Planning Department's Guidelines for Golf Course Development will be utilized during plan approval to assure that adjacent properties will not be adversely affected by direct play on the golf course.

The proposed project is located approximately three miles from the

Keaau-Pahoa Road/Ainaloa Blvd. intersection. Keaau-Pahoa Road (Highway 130) is a two-lane highway under the jurisdiction of the State Department of Transportation. Primary access to the golf course will be from Ainaloa Boulevard, a private road with a 60-foot right-of-way consisting to a 20-foot wide asphaltic-concrete pavement.

The project is identified to be outside the 500-year flood plain or Zone "X". The applicant has prepared a Stormwater Runoff Assessment to analyze storm runoff conditions for the subject property. The study determined that runoff is considered to be insignificant. To mitigate any possible storm water runoff and to ensure that all runoff is retained on-site, the applicant shall prepare a detailed drainage plan meeting with the approval of the Department of Public Works for submittal at the time of plan approval review.

The granting of the proposed use will not adversely affect similar or related existing uses within the surrounding area, community, or region. The City of Hilo has one 18-hole municipal golf course and one 9-hole private golf course (open to the public). In addition, the Planning Commission has approved two additional 18-hole golf courses, one to be located mauka of the Komohana-Ponahawai Street intersection, and the other to be located mauka of the Wilder Road-Kaumana Drive intersection. Another golf course is under construction at Pohoiki. It is not anticipated that this approval would not affect these existing or proposed courses.

All essential utilities and services required for the development of a golf course and related facilities are or will be made available. Conditions of approval relative to the provision of such services are being proposed. These include off-site roadway improvements and other community benefit assessments meeting with the approval with the Department of Planning and affected agencies. *In the area of roads, the intersection of Keaau-Pahoa Road/Ainaloa Boulevard shall be fully channelized meeting with the approval of the State Department of Transportation and the County Department of Public Works. Ainaloa Boulevard shall be upgraded to County-dedicable, standards from the Keaau-Pahoa Road intersection to the proposed entrance of the project. Also required shall be installation of stop signs and street lights at road intersections that front Ainaloa Boulevard with an existing power pole. All roadway improvements shall be installed prior to occupancy.*”(emphasis added)

Condition No. 6 of Use Permit No. 106 --Channelization of Intersection of Keaau-Pahoa Road and Ainaloa Boulevard

28. One of the reasons for the granting of Use Permit 106 was that Ainaloa was to pay for the channelizing of the intersection of Keaau-Pahoa Road/Ainaloa Boulevard.

29. The Keaau-Pahoa Road and Ainaloa Boulevard intersection was improved and channelized by the State of Hawaii.

30. Condition 6 of Use Permit No. 106 was completed by the State's action

Condition No. 7 of Use Permit No. 106 -- Upgrading of Ainaloa Boulevard

31. In order to obtain Use Permit 106, Ainaloa offered to upgrade Ainaloa Boulevard to County dedicable standards as more specifically set forth in Condition No. 7 of the Use Permit

32. One of the stated reasons for granting Use Permit No. 106 was Ainaloa's offer to upgrade Ainaloa Boulevard to dedicable standards.

33. In 1992 Ainaloa estimated the cost of upgrading Ainaloa Boulevard to County dedicable standards at \$6,100,000.

34. Ainaloa's proposed amend Condition No. 7 of Use Permit No. 106 would reduce Ainaloa's obligations with regard to Ainaloa Boulevard to the payment of \$1,000,000 to the County of Hawaii, with \$500,000 to be paid prior to the issuance of any construction permit for the golf course, and the balance to be paid prior to the opening of the golf course

35. Ainaloa also offers to pay for or construct the potable water line and standpipe and to provide reduced green fees for local residents and the use of other amenities on the property.

36. The Department recommends denial of the proposed amendment to Condition No. 7 of Use Permit No. 106.

37. Fulks proposes that the \$1,000,000 contribution to the County of Hawaii proposed as an amendment to Condition No. 7 of Use Permit No. 106, be designated for improvements both to Ainaloa Boulevard and 8th Road of the Hawaiian Acres Subdivision.

38. In 1999, the County of Hawaii established the Puna Emergency Access Road (hereinafter "PEAR") as public road, connecting the Keaau-Pahoa Road, Highway 130 with Highway 11, the Hawaii Belt Road. The route of the PEAR begins at the Keaau-Pahoa Road and Ainaloa Boulevard intersection, extending along Ainaloa Boulevard, connecting with 9 Road, Road F and 8 Road in Hawaiian Acres Subdivision, and extending along 8 Road until its exit at

the intersection of 8 Road and the Hawaii Belt Road.

39. Approximately \$1,700,000 in federal and county funds has already been expended by the County in improving the PEAR.

40. By County of Hawaii Resolution No. 194-04, adopted on July 8, 2004, the Hawaii County Council authorized the Corporation Counsel of the County of Hawaii to initiate eminent domain proceedings, or to negotiate the taking, acquisition and condemnation of the 3.1 mile long Ainaloa Boulevard roadway lot, described as Lot 1311-A, designated by State of Hawaii Tax Map Key Nos. (3) 1-6-004-001 and (3) 1-6-065, portion of 109, owned by Ainaloa Community Association.

41. Resolution No. 194-04 also authorized the condemnation of the 5.3 mile long portion of the PEAR within the Hawaiian Acres Subdivision.

42. If Resolution No. 194-04 is carried to its natural conclusion the County of Hawaii will acquire ownership of Ainaloa Boulevard.

43. The Department of Public Works recommended against the County accepting the \$1,000,000 contribution because they believe that by accepting the contribution, liability for the road improvements would be transferred to the County.

44. A traffic study prepared for the Ainaloa project in 1992 estimated that the project would generate about 50 vehicular trips during the morning peak hours, and 70 vehicular trips during the afternoon peak hours.

45. The 1992 traffic study did not take into consideration current traffic conditions or the traffic that might be generated by the Puna Emergency Access Road.

46. If the golf course were not developed, Ainaloa could subdivide its property into approximately 175 lots under the current Agricultural one-acre (A-1a) zoning, without obtaining any additional zoning entitlements or discretionary permits.

47. The County of Hawaii has developed a formula for impact fees required to be paid for off-site improvements when property is rezoned for residential use. The impact fees were developed based upon a study conducted in the 1990s which calculated the cost of off-site improvements and divided up the cost into a proportional share per unit or lot.

48. The impact fees that would be generated by a 175 lot A-1a subdivision would be

less than the amount either originally offered or currently being offered by Ainaloa as amenities.

49. This project is not a rezoning for residential use, but rather is a commercial use in a residential/agricultural setting.

Condition No. 9 of Use Permit No. 106 – Community Benefit Assessment

50. As set forth in Paragraph 27 above, one of the reasons for the Use Permit being granted was that a community Benefit Assessment program would also encompass a wide range of community needs rather than the limited recreational needs.

51. As set forth in Condition No. 9, one of its purposes was to insure that the goals and policies of the General Plan are implemented.

52. The Ainaloa Community Association sent out “*Questions for the Ainaloa Community*” dated January 2004, telling the owners and homeowners that the Ainaloa Development Corporation was proposing an 18-hole golf course with related amenities (clubhouse/recreational center) on 200 acres of land. The owners and homeowners were told that the land is located at the end of Ainaloa Boulevard. They were also told that as part of this project Ainaloa was proposing (i) to contribute a \$1,000,000 towards improvements to Ainaloa Boulevard, (ii) to provide a stand pipe on one of the Association’s properties for use by the community in times of drought and fire protection, and (iii) preferential access to the golf course and recreational facilities.”

53. The Ainaloa owners and homeowners were asked if they supported the project with the above understanding and of those responding to approximately 3,600 letters sent out, 797 voted in favor 100 voted against and 88 did not take a position with regard to the project.

54. The Ainaloa owners and homeowners were **not** informed that:

a. Other than the \$1,000,000 referred to, Ainaloa would be relieved of the cost of improving Ainaloa Boulevard.

b. A proposed amendment to Condition No. 9 of Use Permit 106 would release Ainaloa from its obligation to provide street lights and bus shelters on Ainaloa Boulevard.

c. The proposed amendment to Condition No. 9 of Use Permit 106 would release Ainaloa from its obligation to provide the Ainaloa Community Association with a water

truck and an asphalt paver.

55. One of the stated reasons for granting Use Permit No. 106 was Ainaloa's offer to provide street lights.

56. The stated reasons for granting Use Permit No. 106 include the community benefit assessment program which by reference to Condition No. 9 and the Developer's letter of October 2, 2002, which letter was attached to the Special Permit, and they included a potable water line and standpipe, bus shelters, a water truck or an asphalt paver for the Ainaloa Community Association.

57. The Department recommends that the propose amendment to Condition No. 9 of Use Permit No. 9 not be granted

58. Fulks recomimends that Condition No. 9 of Use Permit No. 106 be amended to provide that the standpipe providing water for potable and firefighting purposes to be located at within the County's roadway connector lot within Hawaiian Acres Subdivision, at the end of Ainaloa Boulevard, and that the Ainaloa community and the Hawaiian Acres community share the water for drinking and fire fighting purposes.

Special Permit No. 827

59. The original reasons for approval of Special Permit 827 in 1992 were:

"The granting of this request to allow for an expanded golf clubhouse, recreational facilities and related improvements would not be contrary to the objectives of Chapter 205, Hawaii Revised Statutes, as amended. The proposed clubhouse will be a two-story structure with a floor area of approximately 30,000 square feet. In addition, a recreation center would include a 6,500 square foot recreation building, two tennis courts and a swimming pool. All facilities would be appurtenant to the main use of the subject property as a golf course. The recreational facilities would be made available to Ainaloa Community Association members upon conditions agreed upon by the Association and owner. The State Land Use Law and Regulations are intended to preserve, protect, and encourage the development of lands in the State for those uses in which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the *intent* of the State Land Use Laws Rules and Regulations is to preserve or keep lands of high agricultural potential in agricultural use. The lands on which the proposed expanded golf clubhouse and recreational facilities would be located is classified "E" or very poor by the Land Study Bureau's Overall Master Productivity Rating and not classified by the Department of

Agriculture's ALISH map. Therefore, it can be determined that the proposed use would not affect important agricultural lands within the district or region and would not be contrary to the objectives of the State Land Use Law.

The desired use will not adversely affect the surrounding properties. Surrounding uses include scattered residential and agricultural uses. The expanded clubhouse and recreational facilities would be located toward the interior of the property and adequately screened with berms and landscaping. It is anticipated that the impacts will be minimal due to the size of the property. The surrounding golf course will also serve as a buffer between the activities associated with the clubhouse and recreational facilities. Hours of operation would be from approximately 7:00 to sunset, with limited use of recreational facilities during evening hours, thereby minimizing any traffic or noise impacts to the surrounding properties during evening hours.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. ***All necessary infrastructure to support the proposed development will be funded by the applicant (emphasis added).*** A private wastewater treatment plant will be constructed on site by the owner. Both potable and irrigation water will be provided via the construction of two wells. All potable water system improvements shall meet with the approval of the Department of Water Supply. Access and installation of fire protection standards shall meet with the approval of the Fire Department and will be required as a condition of approval.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The establishment of an agricultural subdivision unrelated to an established community core has created a need for facilities to accommodate recreational and social requirements of the community.

The land upon which the proposed use is sought is not unsuitable for the uses permitted within the district, however, the proposed use will not interfere with permitted uses.

The proposed facilities will not substantially alter or change the essential character of the land but will complement the open and rural character of the land. All recreational facilities will be incorporated within the proposed clubhouse site and the surrounding golf course which are permitted within the State Land Use Agricultural District. Landscaping will be incorporated around the structures as to minimize visual impacts.

The request is not contrary to the goals, standards and policies of the General Plan. The proposed use is consistent with the goal of the Land Use Element of the General Plan which is to "Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County." The proposed is consistent with the policy that, "The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."

60. Roadways by which employees and the public access the project are part of the infrastructure for the project.

61. One of the reasons for the granting of Special Permit No. 827 was that needed improvement to Ainaloa Boulevard would not have to be paid for by the County or State of Hawaii.

62. Improving Ainaloa Boulevard is not a Condition of Special Permit No. 827

63. Special Permits are governed by Chapter 205 of Hawaii Revised Statutes, as amended and Rule 6 of the PCRPP.

64. Rule 6 of the PCRPP contains provision for amending permits or conditions.

65. The Department recommends that Ainaloa's time extension be granted.

66. Fulks has no objection to the requested time extension.

67. Condition No. 4 of Special Permit No. 827 requires that the developer comply with all applicable conditions of the accompanying Use Permit for the golf course and clubhouse.

68. Ainaloa does not seek to amend Condition No. 4 of Use Permit No. 827.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact the Contested Case Hearing Officer now makes the following Conclusions of Law.

1. Neither Chapter 25, Division 6 of the Hawaii County Code nor Rule 7 of the PCRPP provide legal authority for the Planning Commission to amend, alter or delete conditions of Use Permit No. 106.

2. Condition 19 of Use Permit 106 sets forth the circumstances under which an initial extension of time for performance of the conditions within the permit may be granted by the Planning Director.

3. Condition 19 of Use Permit No. 106 is the authority upon which the Commission relies for its power to grant an extension of time for performance of a condition in the Use Permit.

4. Condition 19 of Use Permit No. 106 does not set forth the circumstances under the Commission can otherwise amend or delete a condition of a Use Permit.

5. The reference to procedures for amending a Special Permit in Rule 6 of the PCRPP, and the absence of reference to amending or deleting conditions Use Permits in Rule 7 of the PCRPP implies a legislative intent to deny the Planning Commission the authority to amend or delete conditions in a Use Permit.

6. If it is assumed that because the Zoning Code gives the Planning Commission the power to impose conditions reasonably related to the proposed use then they must have the power to amend or delete conditions, there must be some guidelines for the exercise of that power.

7. If the Planning Commission has the authority to amend or delete conditions in a Use Permit they can only do so if there will be no material change in results of the analysis required by Section 7-3(C) of Rule 7 of the PCRPP.

8. The Planning Commission does not have the authority to amend or delete a condition of Use Permit No. 106 if to do so would be contrary to the original reasons for the granting of the permit.

9. Deleting Condition No. 6 would not be contrary to the original reasons for the granting of Use Permit No. 106 because Condition 6 was completed by the State's action

10. Amending Condition No. 7 of Use Permit No 106 to allow Ainaloa to \$1,000,000 to the County of Hawaii in lieu of upgrading Ainaloa Boulevard would shift the burden to public agencies to provide roads and streets and an analysis in accordance with Section 7-3(C)(iii) would reach a conclusion different from the conclusion reached when the Use Permit was issued.

11. Amending Condition No. 7 of Use Permit No 106 to allow Ainaloa to \$1,000,000 to the County of Hawaii in lieu of upgrading Ainaloa Boulevard would be contrary to one of the stated reasons for the granting of the Use Permit.

12. Condition 7 of Use Permit 106 bears a reasonable relationship to the use permit

granted.

13. The approval Ainaloa's proposal as expressed by members of the Ainaloa Community Association was not an informed decision.

14. Providing bus shelters and providing Ainaloa Community Association with funds for/or a water tanker and an asphalt paver as set forth in Condition 9 of Use Permit No. 106 were conditions proposed by Ainaloa that met with the approval of the Department of Planning to insure compliance with the goals and policies of the General Plan.

15. Deleting those provisions would result in a different analysis under Section 7-3(c)(i) of Rule 7 of the PCRPP than was had when the permit was issued.

16. Those portions of Condition No. 9 of Use Permit No. 106 that require Ainaloa to provide Ainaloa Community Association with funds for/or a water tanker and an asphalt paver and to construct bus shelters along Ainaloa Boulevard at different locations along the right-of-way were among the reasons for the granting of Use Permit No 106.

17. Condition 9 of Use Permit 106 bears a reasonable relationship with the use permit granted.

18. Condition 7 of Special Permit No. 827 sets forth the circumstances under which the time for the performance of the conditions within the Special Permit can be extended.

19. The amendment of Condition No. 2 of Special Permit No. 827 to authorize a five-year time extension for obtaining plan approval for Ainaloa's expanded golf clubhouse, recreational facilities and related improvements, complies with the requirements for a time extension contained in Condition No. 7 of Special Permit No. 827.

HEARING OFFICER'S RECOMMENDATION

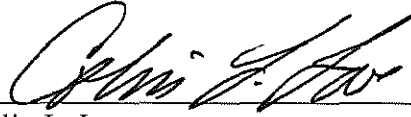
Based upon the preceding findings of fact and conclusion of law, your Hearing Officer recommends to the Hawaii County Planning Commission:

1. That Ainaloa Development Corporation's request to amend Conditions Nos. 3 of Use Permit 106 and Condition No. 2 of Special Permit No. 827 be granted.

2. That the request to delete Condition 6 of Use Permit No. 106 be granted.

3. That the request to amend Conditions 7 and 9 of Use Permit No 106 be denied.

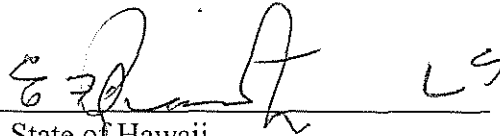
DATED: Kailua-Kona, Hawaii, October 7, 2004 .



Colin L. Love,
Hearing Officer

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 7th day of October, 2004 before me personally appeared COLIN L. LOVE, to me known to be the person described in and who signed the foregoing instrument and who acknowledged that he signed the same as his free act and deed.



Notary Public, State of Hawaii
Print or Type name E. J. GIANOTTI, ATTY
My commission expires: MAR 26 2006

BEFORE THE PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of the Application of)
) USE PERMIT NO. 106
AINALOA DEVELOPMENT) SPECIAL PERMIT NO. 827
CORPORATION)
) CERTIFICATE OF SERVICE
To Amend Conditions of Use Permit No. 106)
and Special Permit No. 827, Which Allowed)
the Development of a Golf Course, Golf)
Clubhouse, and Related Improvements on)
Lands within the State Land Use Agricultural)
District and County's Agricultural 1-acre)
Zoned District at Keaau, Puna, Hawaii,)
TMK:1-6-04:21 and 57.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was duly served upon the following parties by mailing the same, postage prepaid on October 7, 2004 to:


County of Hawaii Planning Commission
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
Attention Norman Hayashi

Sandra Pechter Song, Esq
101 Aupuni Street, Suite 124
Hilo, HI 96720
Attorney for Ainaloa Development Corporation

Ole Fulks
HC-1, Box 5664
Keaau, Hawaii 96749
Intervenor

Bobby Jean Leithead-Todd
Deputy Corporation Counsel
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720
Attorney for Planning Director, Christopher Yuen

DATED: Kailua-Kona, Hawaii, October 7, 2004.



Colin L. Love, Hearing Officer



Planning Commission

Lorraine R. Inouye
Mayor

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

CERTIFIED MAIL

November 9, 1992

Mr. Sidney Fuke
Sidney Fuke & Associates
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Use Permit Application (UP 92-8)
Special Permit Application (SP 92-18)
Applicant: Ainaloa Development Corporation
Request: Golf Course, Expanded Clubhouse,
Recreational Facilities & Related Improvements
Tax Map Key: 1-6-4:21 & 57

The Planning Commission at its duly held public hearing on November 4, 1992, voted to approve the above applications, Use Permit No. 106 to allow an 18-hole golf course, golf clubhouse and related improvements on 200 acres of land zoned Agricultural-1 acre (A-1a) by the County and Special Permit No. 827 to allow for an expanded golf clubhouse, recreational facilities, and related improvements. The proposed clubhouse would contain locker and changing rooms, a restaurant, and a recreation center which would include a swimming pool, exercise room, ping-pong area, meeting area, and tennis courts. The proposed 200-acre project site is zoned Agricultural-1 acre (A-1a) and is located adjacent to the Ainaloa Subdivision, approximately seven miles southeast of Keaau and four miles northwest of Pahoia. The proposed site is located on Ainaloa Boulevard, at the extreme northwestern end (mauka) of the Ainaloa Subdivision, approximately 3.7 miles from Highway 130, Keaau, Puna, Hawaii.

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Approval of Use Permit request is based on the following:

The establishment of an 18-hole golf course and related facilities within the County's Agricultural-1 acre (A-1a) zoned district will not be inconsistent with the general purpose of that zoned district, the intent and purpose of the Zoning Code, and the General Plan, provided adequate mitigating conditions are met.

The subject request will also provide a form of perpetual open space, thus, maintaining the current open character of the adjacent surrounding area with its natural and scenic qualities. The proposed development would, therefore, be consistent with the policies of the Recreation and Open Space elements of the General Plan which state that recreational facilities in the County shall reflect the natural, historic, and cultural character of the area, and that the recreational use should be compatible with the adjacent areas. The Department of Land and Natural Resources concurred with the findings of the applicant's archaeological inventory survey that all sites in the project area were recorded and only two archaeological sites were identified. Both sites were determined to be "no longer significant", and the proposed development will have "no effect" on historic sites.

The granting of this proposal would complement the goals of the General Plan's Recreation element which states to "Provide a diversity of environments for active and passive pursuits" and to "Provide a wide variety of recreational opportunities. . . ."

As a condition of this approval would be the formulation of a community benefit assessment program by the Planning Director prior to Final Plan Approval of the golf course. It is felt that this provision would be consonant with the policy of the Land Use Element that states "The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment." A community benefit assessment program would also encompass a wide range of community needs rather than the limited recreational needs determination previously required.

Golf courses are permitted uses within the State Land Use Agricultural District provided that the affected lands are not classified either "A" and "B" soils by the Land Study Bureau. The Land Study Bureau's Overall Master Productivity rating for

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agricultural use of the subject property is Class "E" or very poor; therefore, consideration of a golf course within these State land use parameters is permissible.

The granting of the proposed use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties. The character of land use in the immediate area is open space with clustered residential homesites. Adjacent to the project site are the agricultural subdivisions of Ainaloa to the southeast, Hawaiian Acres to the west, Tiki Gardens to the east, and Orchidland Estates to the north. As previously mentioned, the open nature of the proposed golf course will complement the rural character of the community. The proposed clubhouse and wastewater treatment plant will be centrally located on the property and screened with berms and landscaping to minimize adverse visual impacts to surrounding properties. Existing vegetation would be retained as much as possible between fairways. In addition, the Planning Department's Guidelines for Golf Course Development will be utilized during plan approval to assure that adjacent properties will not be adversely affected by direct play on the golf course.

The proposed project is located approximately three miles from the Keaau-Pahoa Road/Ainaloa Blvd. intersection. Keaau-Pahoa Road (Highway 130) is a two-lane highway under the jurisdiction of the State Department of Transportation. Primary access to the golf course will be from Ainaloa Boulevard, a private road with a 60-foot right-of-way consisting to a 20-foot wide asphaltic-concrete pavement.

The project is identified to be outside the 500-year flood plain or Zone "X". The applicant has prepared a Stormwater Runoff Assessment to analyze storm runoff conditions for the subject property. The study determined that runoff is considered to be insignificant. To mitigate any possible storm water runoff and to ensure that all runoff is retained on-site, the applicant shall prepare a detailed drainage plan meeting with the approval of the Department of Public Works for submittal at the time of plan approval review.

The granting of the proposed use will not adversely affect similar or related existing uses within the surrounding area, community, or region. The City of Hilo has one 18-hole municipal golf course and one 9-hole private golf course (open

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to the public). In addition, the Planning Commission has approved two additional 18-hole golf courses, one to be located mauka of the Komohana-Ponahawai Street intersection, and the other to be located mauka of the Wilder Road-Kaumana Drive intersection. Another golf course is under construction at Pohoiki. It is not anticipated that this approval would not affect these existing or proposed courses.

All essential utilities and services required for the development of a golf course and related facilities are or will be made available. Conditions of approval relative to the provision of such services are being proposed. These include off-site roadway improvements and other community benefit assessments meeting with the approval with the Department of Planning and affected agencies. In the area of roads, the intersection of Keaau-Pahoa Road/Ainaloa Boulevard shall be fully channelized meeting with the approval of the State Department of Transportation and the County Department of Public Works. Ainaloa Boulevard shall be upgraded to County-dedicable standards from the Keaau-Pahoa Road intersection to the proposed entrance of the project. Also required shall be installation of stop signs and street lights at road intersections that front Ainaloa Boulevard with an existing power pole. All roadway improvements shall be installed prior to occupancy.

Approval of the Use Permit request is subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. The applicant shall prepare an Erosion Control Plan addressing a detailed drainage system meeting with the approval of the Department of Public Works which shall be submitted at the time of Plan Approval Review for the proposed development. As required by the Department of Public Works, all runoff generated from the proposed development shall be disposed on-site.
3. Final Plan Approval for the proposed golf course and related improvements shall be secured from the Planning Department within 18 months from the effective date of the 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 (45) days prior

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to the date by which plan approval must be secured. Plans shall identify all structures, landscaping, which shall include a 40-foot perimeter landscaping buffer, and paved parking stalls associated with the proposed development.

4. Construction of the golf course and related improvements shall commence within one year from the date of receipt of final plan approval and be completed within three (3) years thereafter.
5. The project's access roadway and its connection to Ainaloa Boulevard shall meet with the approval of the Department of Public Works. The applicant shall provide all off-site roadway improvements as may be required by and meeting with the approval of the Department of Public Works.
6. The Keaau-Pahoa Road/Ainaloa Boulevard intersection shall be fully channelized meeting with the approval of the State Department of Transportation-Highways Division and/or the County Department of Public Works, prior to the issuance of the certificate of occupancy or the opening of the golf course, whichever occurs first.
7. Ainaloa Boulevard from Keaau-Pahoa Road to the entrance of the project site shall be upgraded to County dedicable standards meeting with approval of the Department of Public Works. Stop signs and street lights shall also be installed at all lateral roads fronting Ainaloa Boulevard with an existing power pole. In addition, for pedestrian safety, the applicant shall extend the pavement width within the existing right-of-way of Ainaloa Boulevard, including the striping or installing of a rolled curb. All roadway improvements to Ainaloa Boulevard shall be completed prior to the issuance of the certificate of occupancy or opening of the golf course, whichever occurs first.
8. In the design of the golf course, the County of Hawaii Planning Department's Guidelines for Golf Course Design (November 1989, as amended) shall be utilized. The Planning Department shall determine appropriate setback requirements (i.e. building and property line) at the time of plan approval review. Easements for golf course purposes over and across abutting lots, either existing or proposed, shall not be permissible.

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9. To ensure that the goals and policies of the General Plan are implemented, the Planning Director shall formulate a community benefit assessment program which shall include the following: (A) a program for public play at reasonable costs, (B) a program for reasonable access to the proposed recreational facilities by Ainaloa Subdivision residents, (C) a standpipe, providing water for potable and firefighting purposes, to be located on a park site owned by the Ainaloa Community Association, (D) funds for/or a water tanker and an asphalt paver to be donated to the Ainaloa Community Association, (E) bus shelters to be constructed at different locations along Ainaloa Boulevard within the existing right-of-way, and shall not preclude other community benefit assessments as may be approved by the Planning Director. The community benefit assessments, as outlined in the developer's letter of October 2, 1992 to the Planning Director, shall also be provided. Such community benefits shall be implemented prior to the official opening of the golf course.
10. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walks, or caves be encountered during land preparation activities, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.
11. Prior to construction, the applicant shall demonstrate to the satisfaction of the Planning Department that all proposed off-site construction material such as topsoil or sand are being supplied from an approved quarry or resource site.
12. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii. Further, top-soil material-hauling

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traffic shall be restricted to the calculated non-peak hours, as may be defined by the State Department of Transportation.

13. The use of pesticides and herbicides in conjunction with all phases of operation shall conform with the applicable regulations of appropriate governmental agencies. Also the applicant shall establish and maintain the golf course in an environmentally responsible manner based upon principles of an Integrated Pest Management (IPM) system.
14. The applicant shall provide adequate potable water service and back-up facilities to meet demands for fire protection for all golf course-related facilities prior to the issuance of an occupancy permit.
15. A potable and irrigation water system shall be constructed in accordance with the Department of Water Supply's Water System Standards and Rules and Regulations.
16. Should the location of the private potable well on the subject property cause additional wastewater requirements for adjoining properties, the applicant shall provide:
a) a private wastewater system for a single-family residence on the affected lots meeting with the requirements of the appropriate State and/or County rules applicable at the time of issuance of a building permit for a single-family residence on the affected lots; or b) allow the affected property owners to hook-up into the project's wastewater system. Under that basis, the developer shall provide a wastewater transmission line along the property line of the affected adjoining lots.
17. Comply with all other applicable laws, rules, regulations and requirements, including those of the Departments of Transportation-Highways Division, Fire, Health, Water Supply and Public Works.
18. An annual progress report shall be submitted to the Planning Director prior to the anniversary date 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

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conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

19. 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) 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) the 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.

Approval of the Special Permit request is based on the following:

The granting of this request to allow for an expanded golf clubhouse, recreational facilities and related improvements would not be contrary to the objectives of Chapter 205, Hawaii Revised Statutes, as amended. The proposed clubhouse will be a two-story structure with a floor area of approximately 30,000 square feet. In addition, a recreation center would include a 6,500 square foot recreation building, two tennis courts and a swimming pool. All facilities would be appurtenant to the main use of the subject property as a golf course. The recreational facilities would be made available to Ainaloa Community Association members upon conditions agreed upon by the Association and owner. The State Land Use Law and Regulations are intended to preserve, protect, and encourage the development of lands in the State for those uses in which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent of the State Land Use Laws Rules and Regulations is to preserve or keep lands of high agricultural potential in agricultural use. The lands on which the proposed expanded golf clubhouse and recreational facilities would be located is classified "E" or very poor by the Land Study

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Bureau's Overall Master Productivity Rating and not classified by the Department of Agriculture's ALISH map. Therefore, it can be determined that the proposed use would not affect important agricultural lands within the district or region and would not be contrary to the objectives of the State Land Use Law.

The desired use will not adversely affect the surrounding properties. Surrounding uses include scattered residential and agricultural uses. The expanded clubhouse and recreational facilities would be located toward the interior of the property and adequately screened with berms and landscaping. It is anticipated that the impacts will be minimal due to the size of the property. The surrounding golf course will also serve as a buffer between the activities associated with the clubhouse and recreational facilities. Hours of operation would be from approximately 7:00 to sunset, with limited use of recreational facilities during evening hours, thereby minimizing any traffic or noise impacts to the surrounding properties during evening hours.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. All necessary infrastructure to support the proposed development will be funded by the applicant. A private wastewater treatment plant will be constructed on site by the owner. Both potable and irrigation water will be provided via the construction of two wells. All potable water system improvements shall meet with the approval of the Department of Water Supply. Access and installation of fire protection standards shall meet with the approval of the Fire Department and will be required as a condition of approval.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The establishment of an agricultural subdivision unrelated to an established community core has created a need for facilities to accommodate recreational and social requirements of the community.

The land upon which the proposed use is sought is not unsuitable for the uses permitted within the district, however, the proposed use will not interfere with permitted uses.

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The proposed facilities will not substantially alter or change the essential character of the land but will complement the open and rural character of the land. All recreational facilities will be incorporated within the proposed clubhouse site and the surrounding golf course which are permitted within the State Land Use Agricultural District. Landscaping will be incorporated around the structures as to minimize visual impacts.

The request is not contrary to the goals, standards and policies of the General Plan. The proposed use is consistent with the goal of the Land Use Element of the General Plan which is to "Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County." The proposed is consistent with the policy that, "The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."

Approval of the Special Permit 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. Plans for the proposed expanded clubhouse and recreational facilities shall be submitted concurrently with plans submitted for Final Plan Approval review for the proposed golf course and related improvements. 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. In the design and review of any improvements, due consideration shall entail the minimization of noise and visual impacts through appropriate siting, height, bulk, color schemes, and landscaping. Plans shall identify all structures, landscaping, and paved parking stalls associated with the proposed development.
3. Construction of the proposed facilities shall commence within one year from the date of receipt of Final Plan Approval and be completed within three (3) years thereafter.

Mr. Sidney Fuke
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4. Comply with all applicable conditions of the accompanying Use Permit for the golf course and clubhouse.
5. Comply with all other laws, rules, regulations and requirements.
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 with 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.

These approvals do not, however, sanction the specific plans submitted with the applications as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Mr. Sidney Fuke
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If you should have any questions please feel free to contact
Connie Kiriu or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,

Mike Luce

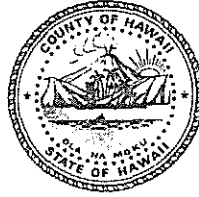
Mike Luce, Chairman
Planning Commission

7842d
jdk

Attached 10/2/92 ltr.

xc: Ainaloa Development Corp. w/ltr.
Department of Public Works w.ltr.
Department of Water Supply w/ltr.
County Real Property Tax Division w.ltr.
State Land Use Commission w/ltr.
Department of Transportation-Highways w/ltr.
Department of Health w/ltr.
Fire Department w/ltr.
DLNR w/ltr.
Mayor w/ltr.
Planning Director w/ltr.
Plan Approval Section w/ltr.
Connie w/ltr.

Harry Kim
Mayor



County of Hawai'i
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720-3043
(808) 961-8288 • Fax (808) 961-8742

November 15, 2004

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit (SPP 827)
Request: Time Extension to Condition No. 2
Use Permit (USE 106)
Request: Amendments to Conditions 3, 6, 7 and 9
Applicant: Ainaloa Development Corporation
Tax Map Key: 1-6-4:21 & 57

The Planning Commission at its duly held public hearing on October 22, 2004, voted to accept the attached Planning Department's Proposed Findings of Fact, Conclusions of Law & Recommendation.

Specifically, the Planning Commission voted to approve Ainaloa Development Corporation's request for a 5-year time extension to Condition No. 2 (time to secure final plan approval) of Special Permit No. 827, which allowed an expanded golf clubhouse, recreational facilities, and related improvements on 7+ acres of land situated within the State Land Use Agricultural District.

The Planning Commission also took the following action to Ainaloa Development Corporation's request to amend or delete certain conditions of Use Permit No. 106, which allowed the development of an 18-hole golf course and related improvements on 200 acres of land zoned Agricultural 1-acre (A-1a):

- Condition No. 3: Approved a 5-year time extension to secure final plan approval for the proposed golf course and related improvements.
- Condition No. 6: Approved request to delete condition, which required construction of the Keaau-Paho Road/Ainaloa Boulevard intersection.
- Condition No. 7: Retained current language of condition to improve Ainaloa Boulevard.

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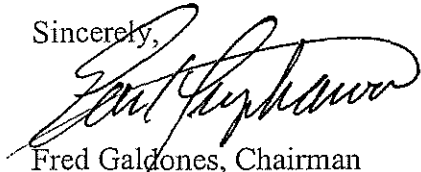
Condition No. 9: Retained current language of condition, with the exception of Condition No. 9(D). The requirement to donate funds for/or a water tanker and an asphalt paver to the Ainaloa Community Association was deleted.

The property is located along Ainaloa Boulevard at the extreme northwestern (mauka) end of Ainaloa Subdivision, approximately 3.7 miles from Highway 130, Keaau, Puna, Hawaii.

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.

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

Sincerely,



Fred Galtones, Chairman
Planning Commission

LainaloafinalPC
Attachment

cc/att: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Rodney Haraga, Director/DOT-Highways, Honolulu
Ainaloa Development Corporation
Sandra Pechter Song, Esq.
Colin Love, Esq.
Mr. Ole Fulks
Ivan Torigoe, Esq.
Bobby Jean Leithead-Todd, Esq.