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

SEP 9 1994

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

Dear Mr. Fuke:

Special Permit Application (SPP 92-21)

Applicant: Kenai Air Hawaii, Inc.

Request: Establish Heliport and Related Improvements

Tax Map Key: 6-2-1:Portion of 51

The Planning Commission at its duly held public hearing on August 24, 1994, voted to approve the above-referenced application. Special Permit No. 885 is hereby issued to establish a heliport and related facilities. The property is located mauka of Queen Kaahumanu Highway, mauka of the Mauna Kea Fairways, Ouli, South Kohala, Hawaii.

Approval of this request is based on the following:

In considering a Special Permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits requires that such action conform to the following guidelines:

- a. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- b. The desired use shall not adversely affect surrounding properties;
- c. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;

- d. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- f. The proposed use will not substantially alter or change the essential character of the land and the present use;
- g. The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans;

In addition to the guidelines detailed above, the Planning Commission must also find that the proposed use:

- a. Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
- b. Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

A proposed use must meet all of these criteria for approval by the Planning Commission.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. While the potential for extensive agricultural uses may exist, the project site is comprised of soils which have been classified as "E93" (Very Poor) for agricultural productivity by the Land Study Bureau's Detailed Land Classification System and which are not classified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) system. The Land Study Bureau cites the "E93" soils within the project site as unsuited for machine tillability. When rated by selected uses and overall suitability, these "E" soils are very poorly suited for the growing of vegetables, sugar cane, orchards and foraging crops. The soils are also poorly suited for

grazing activities. The land upon which the proposed use is sought is not well suited for the uses permitted within the district, which is primarily agriculture. The proposed use will not displace any agricultural activity nor diminish the agricultural potential of the area. Therefore, the proposed use would not be contrary to the objectives of the State Land Use Law for the Agricultural district.

The desired use will not adversely affect the surrounding properties. The proposed heliport, to occupy approximately 4 acres of land, will be centrally located within an 843-acre parcel at a minimum distance of 8,000 linear feet from any existing residential development. The nearest proposed residential development is associated with the South Kohala Resort, to be located approximately 2,000 feet to the west (makai). According to the noise analysis submitted with the application, Federal agencies such as the Housing and Urban Development Agency (HUD) and the Environmental Protection Agency (EPA) recognize 55 Ldn (Day-Night Sound Level) as a desirable goal for exterior noise in residential areas for protecting the public health and welfare with an adequate margin of safety. comparison, noise levels of 60 Ldn are considered by the acoustic consultant to be compatible with natural wildlife and recreational areas. Furthermore, the proposed ingress-egress routes to and from the heliport, which have the greatest potential of impacting surrounding lands, have been selected to avoid overflights of noise sensitive areas, such as residential areas. The noise study concluded that existing residential areas within the vicinity of the project site, such as Kawaihae Village, Anekona Subdivision and Waimea Landmark Estates, would experience noise levels generated from the proposed heliport, and noise levels generated by flybys through the proposed ingress-egress routes, of less than 40 Ldn. study also concluded that ambient noises levels within these subdivisions are probably greater than 45 Ldn, higher than noises to be generated by the proposed heliport. When applying the more stringent "annoyance compliant criteria" (ambient noise levels less 5 Ldn) as adopted by the Hawaii State Helicopter System Plan, noise levels at these subdivisions are also expected to meet this criteria. Noise levels anticipated at the nearest proposed residential development of South Kohala Resort is anticipated to be below 55 Ldn. With an ambient noise level of 40 to 45 Ldn, the proposed residential development of South Kohala Resort may not be able to meet the "annoyance complaint criteria". The majority of remaining

lands surrounding the project site are currently vacant, with no imminent proposal for its development into uses which could conflict with the proposed heliport. to with the Waimea Community Association Planning Committee and recommended by the applicant's acoustic consultant and the State Department of Transportation, the applicant will be required to strictly adhere to the ingress-egress flight routes as described within the accompanying Background Report and shown as Figure 7a within the Final (Revised) Environmental Assessment. It is also recommended that a provision to re-assess the Special Permit be included to ensure that development of the South Kohala Resort project on lands mauka of the Queen Kaahumanu Highway as well as other lands within the immediate area will not be adversely affected by the heliport use. Restrictions regarding the number of maximum flights per day, hours of operation, general maintenance activities and test flights will be included as conditions of approval to ensure that the scope of the proposed heliport operations, as assessed by the applicant's acoustic consultant and represented to the Planning Commission and Planning Department, remains consistent with the findings as described within this Recommendation Report.

The proposed heliport will not substantially alter or change the essential character of the land and the present use, due to its remote location within a large vacant parcel. Its location will help to conceal the proposed heliport facilities from surrounding lands.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, police and fire protection. Water, wastewater disposal facilities and other essential services will be made available to the project site. Access to the property will be partially provided by the Hapuna Golf Course access road, a private, paved, two-lane roadway. Access beyond the South Kohala Resort project site is provided by a 20-foot wide gravel utility access road. From a public safety standpoint, it is recommended that this utility access road be improved with a paved surface sufficient for two-way traffic along its entire length from the Hapuna Golf Course access road to the project site. Wastewater generated by the proposed heliport will be disposed of utilizing an individual wastewater disposal system, such as a cesspool. If a more intensive system is required due to the presence of potable water wells located approximately 1,000 feet from the project site, then such a system will be constructed by the applicant to accommodate the

development. Fire protection will be provided by an existing reservoir located adjacent to the project site. On-site drainage facilities will be provided to control runoff. These facilities will be provided in a manner meeting with the applicable requirements of the of the Department of Health, Department of Public Works and the Fire Department. Other consulted agencies had no objection to the request.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. During the 1980's, the helicopter tour industry saw a gain in popularity. The North Kohala area and the volcano became centerpieces for the tourist and helicopterindustries. However, as the demand for helicopter tours grew, so does the need for heliports. Heliports may be permitted on lands located within the State Land Use Urban District through the issuance of a Use Permit by the Planning Commission. However, the establishment of heliports within Urban Districts usually conflicts directly with other noise sensitive urban uses, such as residential, commercial and resort; developments. Agricultural lands provide, for the most part, the large acreage and remote locations required to establish a buffer from noise generated by such a facility. The potential for conflicts with urban uses are subsequently minimized.

Approval of the proposed heliport in this particular location will support a growing helicopter tour industry while also recognizing the sensitivities associated with such activities, which are usually attributed to noise. The applicant has demonstrated a sensitivity to potential noise impacts and has consulted with concerned parties to address these concerns. Those discussions have led to the proposed ingress-egress flight routes which avoid noise sensitive areas. Therefore, the proposed use would be consistent with a goal of the Land Use Element of the General Plan to "Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County" while also complimenting the following goals and policies of the Economic Element of the General Plan:

- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o 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.

O The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

The Mauna Kea Soil and Water Conservation District cited the need for dust control within the project site. applicant noted within the application that the areas within the project site susceptible to take-off and landing wind swirls will be landscaped or covered with mulch for dust control. Run-off generated by the proposed facilities will be controlled by on-site drainage improvements.

Approval of this request is subject to the following conditions:

- The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
- Final Plan Approval for the proposed heliport, pursuant to Sections 25-243 and 25-244 of the Hawaii County Code (Zoning Code), shall be secured from the Planning Department. Plans shall identify all proposed structures, 4 helipads, 2 refueling/repair pads, landscaping, fire protection measures, paved parking stalls and paved driveway and access roadways associated with the proposed Parking shall comply with the requirements of Chapter 25 (Zoning Code). Plans shall also indicate helicopter ingress and egress routes as well as drainage and dust control measures and fuel spill containment/clean-up features.
- A metes and bounds description of the approximately 4-acre (420' by 420') project site in map and written form shall be filed with the Planning Department in conjunction with 11/2 plans for Final Plan Approval review.
  - The applicant shall secure all appropriate approvals and/or permits from the Federal Aviation Administration to allow shellat the establishment of a heliport prior to the issuance of Final Plan Approval. The applicant shall notify the Planning Department in writing of compliance with this condition.
    - 5. The proposed heliport operations shall commence within three (3) years from the date of approval of this Special Permit.

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- 6. Heliport operations at the project site shall be limited to a maximum of 20 landings per day during daylight hours. Emergency landings or emergency helicopter support are excluded from this condition.
- 7. Regular scheduled maintenance of helicopters at the heliport is prohibited. Flight testing of helicopters, with the exception of flights associated with emergency repairs, is also prohibited at the heliport. Other operational procedures, such as refueling, shall comply with applicable governmental regulations.
- 8. Helicopter ingress and egress to and from the project site as shown on Figure 7a of the <u>Final (Revised) Environmental Assessment Kenai Air Hawaii Heliport</u> dated March 18, 1994, shall be strictly adhered to, with the exception of emergency landings.
- 9. The life of this permit shall be for a period coterminous with the revocable license or lease issued to the applicant by Mauna Kea Development Corporation to allow the use of the project site as a heliport, a maximum of 15 years from the date of approval of this permit, or the abandonment or termination of the heliport operations, whichever occurs first.
- 10. Access to the project site from the Hapuna Golf Course access road and along the 20-foot wide utility access road to the project site shall be improved with an asphalt or asphaltic-concrete pavement of sufficient width to accommodate two-way traffic and constructed in a manner meeting with the approval of the Department of Public Works, prior to the issuance of a Certificate of Occupancy for the proposed heliport facility.
- 11. The applicant shall provide for adequate potable water service and assurances to meet the demands for fire protection prior to the issuance of a Certificate of Occupancy for the proposed uses.
- 12. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.

- 13. The applicant shall comply with all other laws, rules, regulations and requirements, including those of the Federal Aviation Administration, State Department of Health and the Fire Department.
- 14. The applicant shall be responsible for operating the heliport facility in a manner as represented to the Planning Commission and prescribed under the conditions of approval of this permit. Non-compliance with these representations or conditions of this permit shall cause the Planning Director to schedule a public hearing on the matter before the Planning Commission to determine whether a violation has, in fact, occurred.
- 15. Should development of lands occur within a one (1) mile radius of the project site and which may be adversely impacted by the heliport operations and/or its primary ingress and egress routes or within five (5) years from the effective date of this permit, whichever occurs first, the Planning Director shall schedule a public hearing regarding this permit to assess whether such continued use of the project site as a heliport is consistent with the guidelines for granting a Special Permit as prescribed by Rule 6 of the Planning Commission.
- 16. An annual monitoring 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, a comprehensive listing of all complaints received by the applicant regarding operations at the heliport and its disposition. 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.
- 17. An extension of time for the performance of conditions within the permit, with the exception of Condition No. 9, may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the General Plan or Zoning Code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one

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

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

Should you have any questions, please feel free to contact Rodney Nakano or Linda Copman of the Planning Department at 961-8288.

Sincerely,

Wilton Wong, Vice Chairman Planning Commission

RKN:jdk LKenai01.PC

xc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Federal Aviation Administration
Mauna Kea Development Corp.
Department of Health
Fire Department
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Plan Approval Section



## County of Hawai'i

#### LEEWARD PLANNING COMMISSION

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

\* MAR 1 4 2011

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

Dear Mr. Fuke:

Special Permit (SPP 885)

Applicant: Sunshine Helicopters, Inc.

Request: Amendment to Condition No. 9 of SPP 885 for an 11-Year Time Extension to Operate from September 9, 2009 to September 9, 2020

Tax Map Key: 6-2-1:portion of 51

The Leeward Planning Commission at its duly held public hearing on February 17, 2011, voted to approve the above-referenced request for an amendment to Condition No. 9 of Special Permit No. 885, which allowed the establishment of a heliport and related facilities on approximately 4 acres of land situated within the State Land Use Agricultural District. The amendment request is to allow the heliport to continue operations for an additional 11 years under a new lease with the fee owner of the subject property. The project site is located mauka of the Queen Ka'ahumanu Highway, mauka of the Mauna Kea Fairways, Ouli, South Kohala, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting an amendment to Condition No. 9 of Special Permit No. 885 to allow the heliport to continue operations for an additional 11 years under a new lease agreement with the landowner. The Planning Commission issued Special Permit No. 885 on September 9, 1994 to allow the establishment of a heliport and related facilities. The heliport facility currently consists of 4 helipads, a portable office building and related improvements within a 420-foot by 420-foot (176,400 square feet) project site. Condition No. 9 of Special Permit No. 885 states:

"The life of this permit shall be for a period coterminous with the revocable license or lease issued to the applicant by Mauna Kea Development Corporation to allow the use of the project site as a heliport, a maximum of 15 years from the date of approval of this permit, or the abandonment or termination of the heliport operations, whichever occurs first."

The permit was issued on September 9, 1994. The life of the permit was for a period of 15 years, or until September 9, 2009. Since 2009, the heliport has continued operations. The applicant is in the process of finalizing an extension for their license agreement with the landowner, Mauna Kea Development Corporation, until October 16, 2020. Based on this extended lease agreement, the applicant is requesting that the life of the permit be extended for the period coterminous with the extended license, which is October 16, 2020.

The amendment request 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. Condition No. 9 of Special Permit No. 885 allowed the heliport to operate for a period of 15 years. This time has passed and the applicant is requesting to extend the life of the permit for approximately eleven (11) more years. The landowner is willing to extend the lease for an additional eleven (11) years until October 16, 2020. There have been no complaints from surrounding property owners or others received by the Planning Department since operations began. The applicant has submitted the amendment request to extend the life of the permit.

The granting of the amendment request would not be contrary to the General Plan or Zoning Code. The request continues to be consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designate this area as Extensive Agriculture. This designation consists of lands not classified as Important Agricultural Land. It includes 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.

Additionally, the request continues to be consistent with the zoning for the property, which is Agricultural (A-5a). The applicant previously secured approval from the Planning Commission for Special Permit No. 885 to operate the heliport and related uses within the County's Agricultural (A-5a) zoned district and the State Land Use Agricultural district. With the approval of the Special Permit, the heliport is a permitted use in these districts.

Since the approval of this application, the South Kohala Community Development Plan has been adopted. The plan does not specifically address the heliport operations.

Based on the above discussion, the granting of the amendment request is not contrary to the General Plan or Zoning Code.

The granting of the amendment request would not be contrary to the original reasons for the granting of the permit. The amendment request continues to be consistent with the original reasons for approving the Special Permit. The continued use of the heliport continues to be an unusual and reasonable use of land, which would not be contrary to the objectives of the State Land Use Law for the Agricultural district. Additionally, the use of the heliport has not adversely affected surrounding properties and has not unreasonably burdened public agencies to provide additional services and improvements for the heliport operations. Lastly, the land upon which the heliport is located is unsuited for the uses permitted within the district and the use has not substantially altered or changed the essential character of the land or its present use. Therefore, based on the above information, the granting of the amendment request is not contrary to the original reasons for the granting of the permit.

Approval of this amendment request is subject to the following conditions. The conditions have been updated as some have been completed and are no longer required. 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. Material to be added is underscored; material to be deleted is bracketed and struck through.

- 1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
- [2. Final Plan Approval for the proposed heliport, pursuant to Sections 25-243 and 25-244 of the Hawaii County Code (Zoning Code) shall be secured from the Planning Department. Plans shall identify all proposed structures, 4 helipads, 2 refueling/repair pads, landscaping, fire protection measures, paved parking stalls and paved driveway and access roadways associated with the proposed use. Parking shall comply with the requirements of Chapter 25 (Zoning Code). Plans shall also indicate helicopter ingress and egress routes as well as drainage and dust control measures and fuel spill containment/clean up features.
- 3. A metes and bounds description of the approximately 4-acre (420' by 420') project site in map and written form shall be filed with the Planning Department in conjunction with plans for Final Plan Approval review.
- 4. The applicant shall secure all appropriate approvals and/or permits from the Federal Aviation Administration to allow the establishment of a heliport prior to the issuance of Final Plan Approval. The applicant shall notify the Planning Department in writing of compliance with this condition.
- The proposed heliport operations shall commence within three (3) years from the date of approval of this Special Permit.

- 6-]2. Heliport operations at the project site shall be limited to a maximum of 20 landings per day during daylight hours. Emergency landings or emergency helicopter support are excluded from this condition.
- [7.]3. Regular scheduled maintenance of helicopters at the heliport is prohibited. Flight testing of helicopters, with the exception of flights associated with emergency repairs, is also prohibited at the heliport. Other operational procedures, such as refueling, shall comply with applicable governmental regulations.
- [8-]4. Helicopter ingress and egress to and from the project site as shown on Figure 7a of the Final (Revised) Environmental Assessment Kenai Air Hawaii Heliport dated March 18, 1994, shall be [strictly] adhered to, with the exception of emergency landings.
- [9.]5. The life of this permit shall be for a period coterminous with the <u>amended</u> revocable license or lease issued to the applicant by Mauna Kea Development Corporation to allow the use of the project site as a heliport[, a maximum of 15 years from the date of approval of this permit] until October 16, 2020, or the abandonment or termination of the heliport operations, whichever occurs first.
- [10. Access to the project site from the Hapuna Golf Course access road and along the 20 foot wide utility access road to the project site shall be improved with an asphalt or asphaltic-concrete pavement of sufficient width to accommodate two way traffic and constructed in a manner meeting with the approval of the Department of Public Works, prior to the issuance of a Certificate of Occupancy for the proposed-heliport facility.
- 11. The applicant shall provide for adequate potable water service and assurances to meet the demands for fire protection prior to the issuance of a Certificate of Occupancy for the proposed uses.
- [12.]6. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
- [13.]7. The applicant shall comply with all other laws, rules, regulations and requirements, including those of the Federal Aviation Administration, State Department of Health and the Fire Department.
- [14.]8. The applicant shall be responsible for operating the heliport facility in a manner as represented to the Planning Commission and prescribed under the conditions of approval of this amended permit. Non-compliance with these representations or conditions of this

> permit shall cause the Planning Director to schedule a public hearing on the matter before the Planning Commission to determine whether a violation has, in fact, occurred.

- [15. Should development of lands occur within a one (1) mile radius of the project site and which may be adversely impacted by the heliport operations and/or its primary ingress and egress routes or within five (5) years from the effective date of this permit, whichever occurs first, the Planning Director shall schedule a public hearing regarding this permit to assess whether such continued use of the project site as a heliport is consistent with the guidelines for granting a Special Permit as prescribed by Rule 6 of the Planning Commission.
- 16. An annual monitoring 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, a comprehensive listing of all complaints received by the applicant regarding operations at the heliport and its disposition. 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.]
- [17.]9.[An extension of time for the performance of conditions within the permit, with the exception of Condition No. 9, 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.] If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Planning Commission for appropriate action.

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.

Mr. Sidney Fuke

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

Sincerely, Geraldine Siffen

Geraldine Giffin, Chairman Leeward Planning Commission

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cc:

Mr. Paul Morris

Department of Public Works

Department of Water Supply

County Real Property Tax Division

State Land Use Commission

Department of Land & Natural Resources

Planning Department - Kona

Federal Aviation Administration

Mr. Gilbert Bailado /