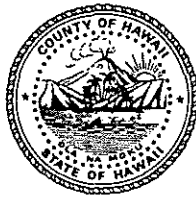


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL

August 5, 1994

Mr. Carey Smoot
Carey Smoot & Associates
44-299 Kaneohe Bay Drive
Honolulu, HI 96744

Dear Ms. Smoot:

Special Permit Application (SPP 94-7)
Applicant: Jordi Llobet-Serra
Request: Establish a Fraternal and Social Order
Tax Map Key: 1-8-7:Portion of 74

The Planning Commission at a duly advertised public hearing on July 28, 1994, considered your request for a Special Permit in accordance with Chapter 205-6, Hawaii Revised Statutes, and Rule 6 of the Planning Commission, to establish a fraternal and social order on 11.35 acres of land within the State Land Use Agricultural District. The project site is located on the makai side of Mauna Kea Drive approximately 5000 feet from its intersection with the Volcano Highway, Olaa Reservation Lots, Keaau, Puna, Hawaii.

The Commission voted to deny the Special Permit based on the following findings:

In considering a Special Permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits require 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.

While a proposed use must meet all of these criteria for approval by the Planning Commission, a denial may be made upon a finding of conflict with any of those criteria.

The proposed use will not promote the effectiveness and objectives of Chapter 205, H.R.S., as amended. Through the passage of Chapter 205, H.R.S., otherwise known as the State Land Use Law, the State Land Use Commission was established. It called for classification of all lands in the State and authorized the adoption of rules of practice and procedure and regulations for land use within the various land use districts. The four land use districts created by the State Land Use Commission, Agricultural, Rural, Urban and Conservation, provided the basic legal framework of land uses in the State of Hawaii and assisted in the implementation of the long-range land use objectives of the State and Counties. The intent of these statutory provisions is 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 in Hawaii.

At the County level, these broader statewide objectives are articulated through the County General Plan. In that respect, consistency with the goals, objectives and policies of the General Plan will also promote the effectiveness and objectives of Chapter 205, H.R.S..

It is felt that the granting of this request within this particular area would, in fact, be inconsistent with the objectives to be sought to be accomplished by the Land Use Law and Regulations as well as the County General Plan. Soils within the project site are of the Ohia Series, which are primarily utilized for sugar cane, pasture and woodlands. These soils are classified by the Land Study Bureau Overall Master Productivity Rating system as "Fair" for agricultural productivity and identified as "Other Important Agricultural Land" by the ALISH map. The agricultural potential of the affected area is demonstrated by the cultivation of the subject property in vegetables and fruits. Therefore, the land upon which the proposed use is sought is well suited for the uses permitted within the district. The proposed use would encumber 11.35 acres of fair agricultural land for the establishment of a fraternal and social order which would promote, according to the applicant, a "permaculture agriculture philosophy". While teachings predicated on a "permaculture agriculture philosophy" will no doubt have some benefit in the promotion of agriculture, such benefit does not outweigh the need of the County to protect its fair agricultural lands. Analogous to this argument would be to establish the University of Hawaii's College of Agriculture and its many support facilities on good or fair agricultural lands due to its undeniable relationship to the agricultural industry and the benefits it provides. Fundamental teachings or beliefs around an "agricultural philosophy" does not, in itself, warrant the use of lands which have been set aside by the State and County for agricultural uses. Based on the information regarding the proposed use as contained within the application and as discussed above, the Planning Director does not feel that the proposed use is a reasonable use of agricultural lands and would not warrant the commitment of 11.35 acres of fair agricultural land for non-agricultural use.

Approval of the subject request would not conform to the following goals, policies and standards of the Land Use Element of the General Plan:

- o Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- o Protect and encourage the intensive utilization of the County's important agricultural lands.

- o The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Similarly, approval of this request would not complement the following goals and policies of the Agricultural Element of the General Plan:

- o Identify, protect and maintain important agriculture lands on the island of Hawaii.
- o Designate, protect and maintain important agricultural lands from urban encroachment.
- o The County shall ensure that development of important agricultural land shall be primarily for commercial agricultural use purposes.

Secondly, the proposed use is not an appropriate use of property in this particular area due to the substandard condition of Mauna Kea Road. Access to the subject property from the Volcano Highway is via Mauna Kea Road, a privately-maintained roadway, for a distance of approximately 5,000 feet. Mauna Kea Road begins from the Volcano Highway as a paved roadway having a pavement width of approximately 10 feet, which is sufficient for one-way traffic only. Approximately 1,500 feet from the intersection, Mauna Kea Road turns into a gravel roadway for the remaining 3,500 feet to the subject property. This portion of Mauna Kea Road has a gravel surface which ranges between 12 feet and 20 feet in width, and which is in extremely poor condition. Erosion and ponding within the roadway has created a hazardous condition for vehicles. The increase in traffic along this substandard roadway which would be generated by the proposed use would **adversely affect surrounding property owners** by attracting traffic along a roadway in which the existing pavement width is not sufficient to accommodate two-way traffic and the gravel-surfaced portions of the roadway would not allow for safe passage for the clients of the proposed fraternal and social order. The Commission would be remiss in its duties were it to approve such a use which would attract traffic along such inadequate, and possibly hazardous, roadways. While the proposed use will be conducted bi-annually for periods of up to 3 weeks, the infrequent nature of the proposed use does not necessarily lessen the possibility of adverse impacts to surrounding properties nor concerns regarding the health and welfare of those who must use Mauna Kea Road. Therefore, **the proposed use is not in balance with the physical environment of this portion of Puna.**

The desired use will unreasonably burden public agencies to provide roadway and safety protection improvements. As in previous applications for similar types of uses, applicants were required to provide necessary roadway improvements to ensure a minimum pavement width which would accommodate two-way traffic. As discussed above, the condition of Mauna Kea Road is clearly unable to support the proposed use. To require the applicant to provide such improvements over a distance of 5,000 feet would be financially prohibitive and unreasonable. Mauna Kea Road is privately maintained. The County has no jurisdiction over the use or future improvement of this roadway. Nevertheless, approval of the proposed use, and the potential for similar types of uses along substandard roadways, would create hazardous conditions which the County must recognize and resolve, thereby burdening governmental agencies to address such problems in a reactive, and not pro-active, manner. The Puna District has many miles of substandard roadways which are unable to accommodate the existing traffic levels upon them. It would not be in the best interest of the County to support an intensification of land use in areas unable to cope with such uses.

This denial recommendation is also based on the potential cumulative impact of similar requests along this substandard roadway should this Special Permit be approved. The proliferation of non-residential/agricultural uses along this substandard roadway would eliminate planning options available to the County to ensure the safety and well-being of its residents and the general public. The Commission has been consistent in its efforts to ensure that uses approved through the issuance of a Special Permit are provided with basic facilities and services to accommodate the approved use. Should this policy direction be abandoned with the approval of this request, similar requests along Mauna Kea Road or other similar substandard roadways must be favorably considered, irregardless of the cumulative impacts a concentration of such developments may have on substandard roadways. Such action will affect agricultural lands county-wide and frustrate the County's efforts to manage growth to ensure adequate public facilities and services for all. With the discussion above, approval of the subject request would be in direct conflict with a goal of the Land Use Element of the General Plan to "Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County" while maintaining a policy to ". . . . encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."


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Based on the above considerations, it is determined that the establishment of a fraternal and social order within this portion of Olaa Reservation Lots would be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations and should, therefore, be denied.

A denial by the Commission of the desired use shall be appealable to the Circuit Court in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Should there be further questions on this matter, please feel free to contact Linda Copman or Rodney Nakano of the Planning Department at 961-8288.

Sincerely,



Donald L. Manalili, Chairman
Planning Commission

RKN:smn

xc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
State Land Use Commission
Corporation Counsel
Plan Approval Section

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