



County of Hawai'i

WINDWARD PLANNING COMMISSION

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

AUG 29 2011

Mr. Taylor McMahel
82 Ponahawai Street
Hilo, HI 96720

Dear Mr. McMahel:

Special Permit (SPP 990)

Applicant: Taylor McMahel

Request: Amend SPP 990 to Allow the Expansion of a 4-Bedroom Inn to an
8-Bedroom Lodge

Tax Map Key: 1-9-003:003

The Windward Planning Commission, at its duly held public hearing on August 4, 2011, voted to approve the above-referenced request for an amendment to Special Permit No. 990 by changing from a four (4) bedroom inn operation to an eight (8) bedroom lodge operation on approximately 2.62 acres of land situated within the State Land Use Agricultural District. The property is located on the north side of Old Volcano Road approximately 1,400 feet east of the Pearl Avenue-Old Volcano Road intersection, 'Ōla'a Summer Lots, Volcano, Puna, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting to amend Special Permit No. 990 in order to establish an 8-bedroom lodge. On November 13, 1997, Special Permit No. 990 was issued to Credit Bureau International Trust to allow the establishment of a four-bedroom inn within an existing five-bedroom farm dwelling. The applicant proposes to expand the existing operation to an eight-bedroom lodge by constructing a two-story, 4-bedroom, 4-bathroom structure located approximately 125 feet behind the existing inn. This structure will not contain a kitchen. It will be approximately 1,120 square feet in size and will be constructed over a proposed partially submerged concrete water catchment tank. Four bedrooms within the existing 5-bedroom dwelling will continue to be used by guests and the on-site operator will continue to use the remaining bedroom. Breakfast meals for all

guests will be prepared in the kitchen within the existing inn. Additional landscaping between the proposed building and adjacent properties as well as additional gravel or cinder parking spaces will be provided on-site.

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended. In recognizing that lands within the Agricultural District might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the Legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. The proposed amendment is an expansion of the existing use that was approved with Special Permit No. 990 and therefore is an unusual but reasonable use of land situated within the State Land Use Agricultural District.

The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The property is not classified by the State or County as important or prime agricultural land. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

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

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties.

Surrounding properties are zoned A-3a and A-1a and consist mainly of scattered dwellings and agricultural uses. There are several bed and breakfast operations and inns located along Old Volcano Road between the subject property and the center of Volcano Village. An artist studio/gallery, permitted by Special Permit No. 1157 in 2002, is located within a farm dwelling on the adjacent property to the west. A temporary increase in noise and dust may occur during construction of the proposed lodge building. However, with implementation of landscaping requirements and adherence to the building setback requirements of the zoning code, the applicant's request is not anticipated to have an adverse affect on the surrounding properties.

We recommend the elimination of Conditions 7, 8, and 9 since the applicant has installed a street light on the utility pole located just east of the driveway and additional roadway signage.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the property is via a gravel/cinder driveway from Old Volcano Road, which is a County maintained roadway with approximately 16- to 18-foot wide pavement and grass shoulders within a 50-foot right-of-way. Traffic will not substantially increase due to the proposed project. For hotel or lodge guest rooms without a kitchen, the Zoning Code requires only one parking stall for every three units. Whereas, for bed and breakfast establishments one parking stall is required for each guest bedroom, in addition to one for the dwelling unit. Since the property is not located in an urban area it is likely that guests will rent a vehicle to travel to the site rather than walk or take a taxi. Therefore, it is reasonable to apply the bed and breakfast parking requirement to the proposed project. A condition of the permit will require that nine gravel parking stalls are provided on-site to accommodate guests of the 8-bedroom lodge.

The applicant has indicated that only breakfast meals will be served to the guests of the lodge. The Department of Health requires a Food Establishment Permit be obtained whenever meals containing "potentially hazardous foods" such as eggs, milk and meat are served. Thus, a condition of approval will be added to ensure the applicant comply with this requirement.

County water is not available to the property. The applicant proposes to install a second water catchment tank to provide water to the lodge. Potable water provided to the guests will continue to meet Department of Health standards. A cesspool currently handles wastewater from the existing inn and an additional cesspool will be installed to dispose of wastewater from the proposed lodge building. The property is situated within an area designated as Flood Zone X, an area determined by FEMA to be outside the 500-

year flood plain. Electricity and telephone are available to the property. Police services are provided by the station in Kea'au and fire services are provided in Volcano by the Community Volunteer Fire Station. A condition of approval will be included to require the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements. Thus, the requested use will not burden public agencies to provide additional services.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's Agricultural District boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. Many of the subdivisions in Puna that were created during this time on Agricultural-zoned land have been transitioning to residential uses. Although the property and surrounding areas are designated for agricultural uses by both State and County land use laws, through the issuance of a Special Permit, various "non-agricultural" services may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is located in an area of Volcano that is considered "Existing Urban Development" by the Department of Agriculture's ALISH Map. Soils on the property are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating. The property's soil type is Ke'ei extremely rocky muck which consists of well-drained, thin organic soils overlying pāhoehoe lava bedrock. The property is located on lands designated Agricultural by the State Land Use Commission and zoned Agricultural-1 acre (A-1a) by the County; however due to the properties poor soil quality and relatively small size it is not well suited for agricultural productivity.

(F) The use will not substantially alter or change the essential character of the land and the present use. The land is presently being used to operate a 4-bedroom inn that was established in 1997. The applicant is requesting to expand this use to an 8-bedroom lodge in order to provide transient accommodations for tourists in the Volcano area. The property will continue to be used in the same manner, thus the essential character of the land will not be substantially altered or changed.

(G) The request will not be contrary to the General Plan, Puna Community Development Plan (CDP) and other documents such as Design Plans. The property is located in an area identified as Extensive Agriculture in the General Plan. This designation includes lands not classified as Important Agricultural Land because they 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. Other less intensive agricultural uses as grazing and pasture may be included in the Extensive Agriculture category. The request is to expand an existing land use that has been established on the property since 1997. The proposed expansion would not adversely affect prime or important agricultural land and would support the following goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The primary land use goal of the Puna Community Development Plan (CDP) is to direct urban uses towards "village centers." The subject property is located outside of the Volcano village center boundary; however, the request is to expand a land use that existed before the Puna CDP was created.

Based on the above, the request to amend Special Permit No. 990 to allow the establishment of an 8-bedroom lodge is an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations. Approval of this request is subject to the following conditions. Material to be added is underscored; material to be deleted is bracketed and struck through.

1. The applicant[s], its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. [~~Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code, Section 25-2-72, 25-2-73 and 25-4-7, within one year from the effective date of this permit. Plans shall identify existing and proposed structures, landscaping, fire protection measures, driveway and four gravel~~

~~parking stalls and exterior signs associated with the business. Final Building Inspection shall be secured from the Department of Public Works Building Division for the change of use of the rooms to be converted and used for sleeping purposes for the inn operation.] Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this amended permit in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and proposed structures, signage, fire protection measures, parking stalls, driveway and other improvements associated with the eight-bedroom lodge. Nine (9) parking stalls shall be provided on-site; and any material may be used that will eliminate erosion, mud and standing water. Buffer yard landscaping along the side yard boundaries shall be provided and indicated on the plans in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) standards for the Village Commercial (CV) zone adjoining a Single-Family Residential (RS) zone.~~

3. ~~[Only continental breakfasts are to be served to guests.] The applicant shall obtain a Food Establishment Permit from the Department of Health if required.~~
4. The ~~[inn]~~ lodge operation ~~[will]~~ shall be limited to the requested ~~[four]~~ eight bedrooms~~[-with a maximum of sixteen guests at a time].~~
5. Drinking water shall meet the Department of Health standards.
6. Applicant must install a 20-foot wide fast growth landscaping buffer between his property and that of Intervenor Gilbert Lewers Livingston, meeting with the Planning Director's approval.
- ~~7. Applicant shall coordinate with the Department of Public Works and/or Hawaii Electric Light Company (HELCO) to install a street light with shielding on the utility pole or a pole provided by the applicant fronting his property. All cost incurred for the installation of the street light shall be borne by the applicant.~~
- ~~8. Applicant shall coordinate with the Department of Public Works for additional safety measures along the Old Volcano Road, such as additional speed limit signage, dead end signage, rumble strips, and including a stop sign to be installed at Pearl Street and the Old Volcano Road intersection.~~
- ~~9. The above noted improvements must be approved by the County of Hawaii Department of Public Works.]~~
- ~~10.]~~7. Sewage/wastewater system shall meet with the requirements of the Department of Health.
- ~~11. Applicant must pay all applicable real property taxes prior to operation of the inn.~~
- ~~12. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.]~~

[13.]8. Comply with all relevant laws, rules, regulations and requirements of the County and State of Hawai'i.

[14.]9. An initial extension of time for the performance of conditions within the amended permit may be granted by the Planning Director upon the following circumstances:

- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

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.

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

Sincerely,

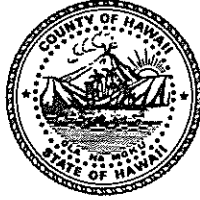


Zendo Kern, Chairman
Windward Planning Commission

Lmcmahelsma990

cc: Mr. Ron Ober/Volcano Ventures Trust
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Health
Mr. Gilbert Bailado

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL
Z 179 517 337

NOV 26 1997

Mr. Eric Aaron Lighter
Credit Bureau International Trust
P.O. Box 2556
Honolulu, HI 96804

Dear Mr. Lighter:

Special Permit Application (SPP 97-21)
Applicant: Credit Bureau International Trust
Request: Establishment of a Proposed Four-Bedroom Inn
Within an Existing Dwelling
Tax Map Key: 1-9-3:3

The Planning Commission at its duly held public hearing on November 13, 1997, voted to approve the above-referenced application and adopt the Hearing Officer's proposed Findings of Fact, Conclusions of Law and Decision and Order. Special Permit No. 990 is hereby issued to allow the establishment of a proposed four-bedroom inn within an existing dwelling situated on approximately 2.62 acres of land within the State Land Use Agricultural District. The property is located on the Old Volcano Road approximately 800 feet northeast of its intersection with Kalaninauli Road at Volcano, Puna, Hawaii.

Approval of this request is based on the following:

FINDINGS OF FACT

1. On June 6, 1997, the County of Hawaii Planning Department received an application from Applicant Eric Aaron Lighter of Credit Bureau International (CBI) for a Special Permit pursuant to HRS §206-5 to establish a four bedroom inn on approximately 2.62 acres of land located in Volcano, in the County of Hawaii, which is within the district classified as agricultural by the State Land Use Commission.

2. The subject property consists of well-drained, rocky soil overlying pahoehoe lava, and is classified as type "E" or "Very Poor" by the Land Study Bureau Classification System.

3. The building within which the activity applied for is to be carried on is a steel framed structure which is located on this property, and there are two similar, bed and breakfast/inn type operations within close proximity of the property in question: a

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six room inn located on Volcano Road approximately 1,380 feet from the property in question, and a four bedroom bed and breakfast type inn located along Wright Road.

4. The subject property is located within one-half mile of the commercial center of Volcano Village, which is the location of the Kilauea Lodge and Restaurant, which has twelve units of overnight accommodations, and several stores, restaurants and a post office, which are located on land which is zoned as commercial by the Hawaii County Code.

5. The lands surrounding the subject property are zoned agricultural (A-1a) by the Hawaii County Code and are in residential uses.

6. The subject property is not serviced by a County of Hawaii approved water system.

7. The subject property has a cesspool which can dispose of a total of 1,000 gallons per day of wastewater, which the Department of Health approves for a five-bedroom building.

8. The subject property is located on Volcano Road, which has a paved roadway of an approximate width of 16 to 18 feet, with grass shoulders, within a right-of-way of approximately 50 feet in width.

9. The subject property is not located within the 500-year flood plain, according to the FIRM (Flood Insurance Rate Map).

10. The County of Hawaii General Plan LUPAG (Land Use Pattern Allocation Guide) Map classifies the subject property as Intensive Agricultural, which would include such uses as diversified agriculture and floriculture.

11. At the present time, no commercial agricultural activity of any kind is being carried on the subject property.

12. At the present time, the property is landscaped as a botanical garden.

13. The Applicant estimates that the use of the property in question as an inn will cause an increase in traffic of an extra three to four cars per day using the road fronting the property in question.

14. The applicant does not foresee that the use of the subject property will require the hiring of any persons to work in the establishment, but that outside contractors will most likely be hired to perform maintenance of the house and grounds of the business.

CONCLUSIONS OF LAW

The Findings of Fact, to the extent that they constitute Conclusions of Law are incorporated below by reference. The Conclusions of Law, to the extent that they constitute Findings of Fact, are incorporated into the Findings of Fact. Based upon the foregoing, the Hearing Officer now makes the following Conclusions of Law.

1. Pursuant to HRS §205-6, the Planning Commission may issue a special permit for a use which is not an agricultural use on property which the Land Use Commission has designated as agricultural if that use is an unusual and reasonable use within the agricultural district.

2. Pursuant to Rule 6-6 of the County of Hawaii Planning Commission Rules of Practice and Procedure (PCRPP), such a permit may be issued if the use is unusual and reasonable and the use would promote the effectiveness of Chapter 205, Hawaii Revised Statutes, as amended.

3. Pursuant to PCRPP Rule 6-7, for a special permit involving fifteen acres or less of land, if the Commission finds the standards of the above-noted Rule 6-6 are met, then it shall approve the permit by stating the reasons for approval and attaching appropriate performance conditions.

4. The desired use is not contrary to the objectives sought to be achieved by the State Land Use Law and Regulations because it does not take any active agricultural land out of production, nor does it introduce a use which would be actively incompatible with agricultural use.

5. The desired use does not adversely affect surrounding properties because the traffic and visual impacts and will not increase unreasonably with mitigation provided by required conditions.

6. The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, drainage, school improvements and police and fire protection for the following reasons:

- A. Applicant will be required to provide additional signage and lighting for the street fronting the subject property.
- B. There is no County wastewater system to which the subject property is connected; but the wastewater will be handled on-site with a cesspool which has been approved by the Department of Health as capable of handling the amount of wastewater generated by the desired use.
- C. The desired use will not lead to an increase of residents who will require school services.
- D. Police and fire services are already adequate to handle the desired use.
- E. The subject property is not connected to any County water system, but the existing catchment system will be adequate with the requirement that drinking water shall meet the Department of Health standards.

7. Unusual conditions, trends, and needs have arisen since the district boundaries have been established because more residences have been placed in the area and a number of these residences have been converted to use as bed and breakfast establishments and inns.

8. The land on which the desired use is sought is classified as soil type "E" (very poor) and is therefore unsuited to agricultural uses within the district.

9. The desired use will not substantially alter or change the essential character of the land and the present use because the desired use will be compatible with the residential use of the property at the present time and with the present use of the surrounding properties as residential and small-scale tourism function such as inns and bed and breakfast establishments.

10. The proposed use is not contrary to the General Plan since it is consistent with the goals and policies of the Economic and Land Use policies of the General Plan because both have the purpose of efficiently using land for productive purposes without hindering efficient use of valuable agricultural lands.

DECISION AND ORDER

After a review of all of the testimony and evidence, the Planning Commission hereby grants this special permit. Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

1. The applicants, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code, Section 25-2-72, 25-2-73 and 25-4-7, within one year from the effective date of this permit. Plans shall identify existing and proposed structures, landscaping, fire protection measures, driveway and four gravel parking stalls and exterior signs associated with the business. Final Building Inspection shall be secured from the Department of Public Works Building Division for the change of use of the rooms to be converted and used for sleeping purposes for the inn operation.
3. Only continental breakfasts are to be served to guests.
4. The inn operation will be limited to the requested four bedrooms, with a maximum of sixteen guests at a time.
5. Drinking water shall meet the Department of Health standards.
6. Applicant must install a 20-foot wide fast growth landscaping buffer between his property and that of Intervenor Gilbert Lewers Livingston, meeting with the Planning Director's approval.
7. Applicant shall coordinate with the Department of Public Works and/or Hawaii Electric Light Company (HELCO) to install a street light with shielding on the utility pole or a pole provided by the applicant fronting his property. All cost incurred for the installation of the street light shall be borne by the applicant.

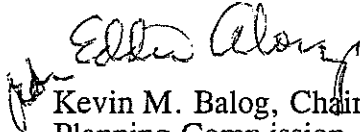
8. Applicant shall coordinate with the Department of Public Works for additional safety measures along the Old Volcano Road, such as additional speed limit signage, dead end signage, rumble strips, and including a stop sign to be installed at Pearl Street and the Old Volcano Road intersection.
9. The above-noted improvements must be approved by the County of Hawaii Department of Public Works.
10. Sewage/wastewater system shall meet with the requirements of the Department of Health.
11. Applicant must pay all applicable real property taxes prior to operation of the inn.
12. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
13. Comply with all relevant laws, rules, regulations and requirements of the County and State of Hawaii.
14. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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

Mr. Eric Aaron Lighter
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Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,


Kevin M. Balog, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu
Aaron Ueno/Department of Health
Diana L. Van De Car, Esq.