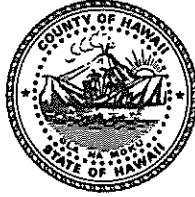


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

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

CERTIFIED MAIL

Z 095 324 478

JAN 29 1999

Steven S. C. Lim, Esq.  
Carlsmith Ball  
121 Waiianuenue Avenue  
Hilo, HI 96720

Dear Mr. Lim:

Special Permit Application (SPP 98-18)  
Applicant: Jerome Franz and Helen Chellin  
Request: Establishment of an Educational Artists-in-Residency Program  
Tax Map Key: 9-4-5:Portion of 6

The Planning Commission at its duly held public hearing on January 22, 1999, voted to approve the above-referenced application. Special Permit No. 1018 is hereby issued to allow the establishment of an educational artists-in-residency program on a portion of a 10.00± acres of land within the State Land Use Agricultural District. The property is located along the east side of a Homestead Road (Lorenzo Road) approximately 5,000 feet north of Mamalahoa Highway, Kiolakaa-Keaa Homesteads, Kau, Hawaii.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. In recognizing that lands within agricultural districts 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 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 Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The subject property has not been actively used for agricultural purposes. The property is located in an area with soils classified as rPXE, which are soils that are used for woodland, pastures and orchards. Although the ALISH maps identify a portion of the subject property as Other Important Agricultural

000856

JAN 29 1999

Lands, the subject property has a soil rating of "E" or "Very Poor." The applicants propose to establish an educational artists-in-residency program to be called "Red Cinder" which will offer outreach seminars, workshops, retreats and guest stays on a 10-acre condominiumized portion of the 20-acre parcel within the State Land Use Agricultural District. The subject property (TMK: 9-4-5-:6) is a 20-acre parcel which has been condominiumized into two 10-acre areas, Unit A-1 (area of this request) and Unit B-2. There is an approved ohana dwelling on Unit B-2. Ohana Dwelling Permit No. 831587 (OHD 170) for the second dwelling on Unit B-2 was approved by the Planning Director on May 24, 1984. The ohana dwelling permit was approved prior to the State Land Use Commission's Declaratory Order of December 4, 1994 which allows only farm dwellings within the State Land Use Agricultural district. Therefore, there is no farm dwelling notice or agreement on file for the subject property.

To accommodate the guests, the applicants propose to remodel the storage areas, unfinished bathroom and garage located on the lower level of the existing single-family dwelling to construct an ADA accessible one-bedroom/one full-bathroom unit and a dance studio/meeting room. The applicants also propose to construct four ADA accessible studios with two communal bathrooms (one ADA accessible) to the rear of the existing dwelling. The four studios and communal bathrooms are proposed to be structurally connected to the existing dwelling. The studios will be constructed in a semi-circular pattern with an open courtyard garden area. The subject property has been utilized for residential purposes. Consequently, the granting of this Special Permit will not displace any agricultural use. No existing or potential agricultural enterprise would be harmed by the proposed use which will be confined to the subject property, and no additional surrounding lands will be affected. Therefore, the proposed use will not displace any agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use, and thus 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. Surrounding uses include single family residential dwellings and agricultural activities. As immediate surrounding properties are in agricultural or residential use, it is not expected that the proposed use would create significant adverse impacts to surrounding properties. According to the applicants, the educational artists-in-residency program will not employ visually offensive structures and equipment, produce unsafe or unpleasant odors or noise, cause noticeable increases in traffic or parking, and will receive only a limited number of participants over a given period of time. The proposed use will be established in the lower level of the existing residence and four studios to be constructed to the rear of, and adjacent to the existing dwelling. The property is sufficient in size to accommodate the proposed use, which will be low key with minimal impact. Landscaping buffers will be included as a condition of approval to alleviate any adverse impacts to surrounding properties and residences. Any detailed landscaping or buffers will be reviewed during Final Plan Approval. Overall, it is not anticipated that the immediate surrounding parcels would be impacted by the establishment of the proposed use.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection. The project site is located within an area adequately served with essential services and facilities such as transportation systems and utilities. A Water Variance

(VAR No. 287) was approved for the subject property, and potable water is drawn from a private catchment system consisting of a 4,000 gallon and 8,000 gallon catchment tank. The subject property is located approximately 2,000 feet on the Kona side of the Mamalahoa Highway/South Point Road intersection, on the mauka side of Mamalahoa Highway, approximately 5,000 feet north of Mamalahoa Highway off of Lorenzo (Homestead) Road. Potential roadway impacts will be minimal since there will be a limited number of participants in the program. Therefore, it is anticipated that the proposed use will not result in a significant increase in regional traffic. Sewage is proposed to be handled by an existing cesspool.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The proposed use will encourage and promote the exchange of educational, cultural and artistic disciplines among participants of the program and surrounding communities. Ka'u has suffered economic setbacks due to the demise of the sugar industry which dominated Ka'u's economic base for over a century. According to the applicants, a 1995 survey conducted by the Naalehu Main Street indicated that residents in Naalehu and surrounding communities favor small business development as the best way to realize a future where the rural character is preserved while still allowing enough job development to support their families. Survey results further indicated that the community favors economic development in the area of tourism, including B&B's, eco-tourism, and cultural tourism. Eco-tourism is increasingly becoming a part of a worldwide trend toward providing alternative visitor experiences in rural and agricultural areas. In spite of the many natural and cultural resources available in the Ka'u District, only a small number of businesses have developed in Ka'u to cater to visitors. As such, Red Cinder will increase the economic base of the Ka'u district and provide opportunities for local residents and tourists to explore, utilize and integrate the cultural and natural resources of the district in various artistic disciplines and pursuits.

The use will not substantially alter or change the essential character of the land and the present use. The proposed use will be confined to the lower level of the existing dwelling and studios to be constructed on the subject property, and will be in keeping with the existing residential character and scale of the surrounding community. The proposed improvements and use will neither conflict with or intensify existing land uses, as approximately 1 percent of the 10 acres will be affected, and the bulk of the property will remain in pasture and open space.

The lands upon which the proposed use is sought is suitable for the uses permitted in the district, however, the proposed use will not interfere with permitted uses. The subject area is currently vacant of any agricultural uses and is in residential use. Therefore, the land is not suitable for agricultural use, and no agricultural activity will be diminished. The zoning for the property is Agricultural-20 acres (A-20a).

The proposed use is consistent with the following goals, policies and standards of the General Plan. The subject parcel falls within an area designated as Orchards on the General Plan LUPAG Map. The zoning for the property is Agricultural-20 acres (A-20a) and the State Land Use designation is Agricultural. As such, a Special Permit would be required to establish a use other than agricultural uses on the subject property. The proposed request would complement and be consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- \* Designate and allocate land uses in appropriate proportions and in keeping with the social, cultural and physical environments of the County.
- \* The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- \* Provide residents with opportunities to improve their quality of life.
- \* The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- \* The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.

Electricity, water, wastewater disposal facilities and other essential services are or will be made available for the proposed use.

Based on the above considerations, the request to establish an artists-in-residency program would be 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 the request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.


1. The applicants, successors or assigns shall comply with all of the stated conditions of approval.
2. Prior to the start of operation, Final Plan Approval, in accordance with the Zoning Code, shall be secured from the Planning Department. Plans shall identify existing and proposed structures, fire protection measures, driveway and parking areas and landscaping associated with the proposed use. Detailed landscaping plans shall include landscaping buffers along the side and rear property boundaries.
3. Any exterior signs shall meet with the approval of the Department of Public Works.
4. The hours of operation for the workshops and seminars shall be limited to 9:00 a.m. to 10:00 p.m. daily.
5. Comply with all applicable laws, rules and regulations of the State and County agencies for the proposed use.

6. Upon compliance with all conditions of approval, the applicants shall submit a final status report, in writing, to the Planning Director.
7. If the applicants fail to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, if the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
8. An initial extension of time for the performance of conditions of 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 the Zoning Code.
  - C) Granting of the extension would not be contrary to the original reasons for the granting of the permit.
  - D) The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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

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

Sincerely,



Leonard Tanaka, Chairman  
Planning Commission

LChell01.PC

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