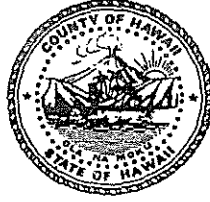


Harry Kim  
Mayor



## County of Hawaii

### PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2904 9434

MAY 06 2002

Mr. Jerry King  
Puuwaawaa Ranch  
71-1645 Mamalahoa Highway #3  
Kailua-Kona, HI 96740

Dear Mr. King:

Special Permit Application (SPP 01-032)

Applicant: Jerry King

Request: Establishment of a 20-Suite Retreat Facility and Related  
Improvements

Tax Map Key: 7-1-1:2

The Planning Commission at its duly held public hearing on April 5, 2002, voted to approve the above-referenced application. Special Permit No. 1144 is hereby issued for the establishment of a 20-suite retreat facility and related improvements on approximately 14.9 acres of a 32.5 acre parcel situated in the State Land Use Agricultural District. The property is the site of the headquarters for Pu'uwa'awa'a Ranch located approximately 2 miles mauka of Mamalahoa, Pu'uwa'awa'a, North Kona, 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 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;

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- 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; and
- 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.

It is felt that the granting of this particular request at this particular location would be consistent with the objectives sought to be accomplished by the Land Use Law and Regulations, the County General Plan and Community Development Plans. The granting of this request will 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. In recognizing that lands within the Agricultural Districts may not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses may 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. Goals specified within the General Plan states that the County shall *“Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments”* and *“Identify, protect and maintain important agriculture lands on the island of Hawaii.”* Based on the site plan provided within the applicant's submittal and the Planning Department's assessment of soil classification data, the project site is situated on lands that maintain an overall master productivity rating of “D” or “Poor” according to the Land Study Bureau's Detailed Land Classification-Island of Hawaii (1965). The Agricultural Lands of Importance to the State of Hawaii (ALISH) Maps also identify the majority of lands within the project site as “Other Important Agricultural Lands.” The proposed 20-unit retreat facility, if approved, will be concentrated on lands that were historically utilized as the headquarters for former ranch operations that occurred within the project site and adjoining lands. While the 14.9-acre project site does contain some areas that are used for pasture and grazing, a large percentage is used to accommodate support facilities for the former ranch operations, such as the various residences, corrals, saddle shed and access roadways that are scattered throughout the project site. The applicant's proposal will place 10 of the proposed 20 units within existing structures. Only 10 new retreat units will be constructed in the future should it be needed. The placement of 10 new retreat unit structures over 14.9 acres is not anticipated to have a significant adverse impact upon the existing limited agricultural resources within the project site or upon agricultural lands within the surrounding area.

Approval of the subject request will be consistent with the following goals and policies of the Land Use and Economic Elements of the General Plan:

Land Use Element

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

Economic Element

- The County shall assist the expansion of the agricultural industry, especially diversified agriculture, through the protection of important agricultural lands, capital improvements and other programs, and continued cooperation with appropriate State and Federal agencies.

- The County shall strive for diversity and stability in its economic system.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

The desired use will not adversely affect the surrounding properties. The project site, consisting of 14.9 acres, is situated within a larger parcel consisting of approximately 32.5 acres, which itself is situated within a 13,000-acre parcel owned by the State of Hawaii. These State-owned lands in the immediate vicinity of the subject property are utilized for pasture. Lands generally mauka of the project site are situated within the Pu'uwa'awa'a Cooperative Game Management Area. The nearest hunting area is situated about one mile from the project site. The Pu'uwa'awa'a Forest Bird Sanctuary is situated about 2.5 miles to the southeast of the project site. The establishment of a 20-unit retreat facility on the project site is not anticipated to have significant adverse impact upon these surrounding lands and uses. We feel that these distances from other major uses within the area is adequate to minimize any significant adverse impacts that may be generated by the proposed use. Short-term construction activities during the development phase of the proposed project may result in noise, dust and other construction-related impacts, but these are expected to be short-lived and minimized with the application of standard construction practices.

Visual impacts from the Mamalahoa Highway are expected to be minimal due to the location of the project site, about 2 miles from the highway. The proposed retreat facility will be tucked at the base of Pu'uwa'awa'a, thereby providing a visual buffer from adjoining areas. The use of existing structures and limiting new structures to no more than 10 additional units will further minimize the possibility of adverse impacts. This approval recommendation requires the applicant to secure Final Plan Approval prior to the establishment of the retreat facility or the construction of new retreat units. During Plan Approval review, the Planning Department will assess the proposed location of new structures to ensure that their siting will minimize significant visual impacts from adjoining lands.

This approval recommendation also includes a condition of approval that will allow the Planning Director to suspend activities permitted by the Special Permit should the applicant fail to comply with conditions of this approval or is unable to resolve any complaint relating to interference or nuisance upon the surrounding lands or uses. Should the applicant fail to comply with the conditions of approval or has caused any unreasonable interference or nuisance on surrounding lands or uses, the permit may be revoked by the Planning Commission.

Two structures to be utilized as 3 retreat units and identified as "Big A-Frame" and "Small A-Frame" are situated at the southern boundary of the subject property and appear to encroach upon adjoining State-owned lands. The applicant states that this resulted from the separation of subject property, held in fee, from the remaining lease lands which surrounds the subject property. The applicant also states that he is working with the State Department of Land and Natural Resources to resolve these encroachments and must be accomplished before the issuance of Final Plan Approval for these two structures.

Applicant is on notice of the on-going ranching, hunting and proposed shooting range activities on State land in the vicinity of the subject property. Therefore, this permit is not to be construed as the Commission's finding that the applicant is entitled to any particular level of quiet or noise control. Nor is this permit to be construed as the Commission's taking a position, one way or another, regarding the continuation or institution of ranching, hunting or shooting activities on State land in the vicinity.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, police and fire protection. According to the application, access to the project site from the Mamalahoa Highway will be accommodated by an existing one-lane, paved access road. The proposed retreat will accommodate guests with an anticipated length of stay ranging from 3 to 30 days. The Department of Public Works, State Department of Transportation, and the State Department of Land and Natural Resources did not express any concerns or comments regarding traffic that will be generated by the proposed retreat facility. An on-site inspection of the project site by Planning Department staff found the one-lane road to be in moderate condition with relatively good visibility. The access roadway also accommodates traffic to other locations within the Pu'uwa'awa'a ahupua'a. The Planning Department does not anticipate that the limited traffic to be generated by the proposed retreat facility will have a detrimental effect upon the area's existing access roadway or its intersection with the Mamalahoa Highway.

The County's water system does not extend to the project site. Potable water to the site is supplied by the Pu'uwa'awa'a Water Company, which also provides water to Puu Lani Ranch Subdivision and other residences in the general area. The Department of Water Supply had no comments regarding the proposed development.

Wastewater will be disposed of within existing cesspools that service the existing buildings. The State Department of Health has expressed its concern regarding the use of existing cesspools within 1,000 feet of a drinking water well. The applicant notes that the well was installed after the installation of the cesspools. The Department of Health has indicated that its Wastewater Branch will make a determination regarding the continued use of the cesspools. The applicant will be required to comply with applicable

Mr. Jerry King

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wastewater disposal standards for any new retreat units to be constructed. Compliance with the requirements of the State Department of Health will be made a condition of this approval recommendation.

All other essential public utilities and facilities are or will be made available to support the proposed retreat.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The State and the County, through its land use laws, have the fiduciary responsibility of protecting its important agricultural lands located in limited quantities throughout the State. However, the protection of these lands cannot be accomplished without consideration of non-agricultural uses that, when combined, creates a mutually beneficial relationship that enhances the ability of an entity to utilize agricultural lands in a feasible manner. Extensive, plantation-style agriculture is slowly becoming less of an economic factor on this island. Smaller acreages of land are being cultivated by smaller entities. Many large landowners may no longer have the resources necessary to conduct agricultural activities over vast expanses of land. The County must consider various non-agricultural options that could have a secondary, beneficial effect upon a landowner's ability to maintain their land. The project site provides an excellent case-in-point. The project site and its surrounding lands were once leased to a large ranching operation that once covered over 100,000 acres, but is now confined to 21,000 acres. Current leases for ranching are being issued by the State on a month-to-month basis. The applicant's request is to cultivate the "ranch atmosphere" while enjoying the natural resources the project site has to offer as well as promote "*land stewardship, reforestation, and health ecosystems.*" These activities are not inconsistent with the potential for continued agricultural use of the project site. The "cultivation" of land may mean many things. The applicant wishes to "cultivate" the natural resources of the area as well as the more typical organic and herb gardens. If the establishment of a retreat facility will promote the "cultivation" of these lands in the various manners disclosed by the applicant, then the Planning Department's support of this request is appropriate.

The land on which the proposed use is sought is unsuited for the uses permitted within the district. While this particular criteria for approval of a Special Permit seeks to utilize "unsuitable" agricultural lands for non-agricultural types of uses, the Planning Department feels that certain non-agricultural uses may be appropriate on lands suitable for agriculture. As discussed in the previous paragraph, the department is seeking a balance of co-existing agricultural and non-agricultural uses that are mutually beneficial to each other. The current economic climate within the agriculture industry emphasizes the importance of seeking innovative means to sustain itself. The applicant's proposal is one such innovative approach to enhancing the use and maintenance of lands upon which

Mr. Jerry King

Page 7

it will be established. The establishment of the retreat facility will capitalize on the existing natural resources of the area and will support the applicant's efforts to further enhance the project site through planting of native plant species.

The use will not substantially alter or change the essential character of the land and the present use. The proposed retreat will not significantly change the fundamental agricultural character of the project site or the surrounding area. The applicant will utilize existing structures to accommodate 10 units while the additional 10 units will be accommodated within new structures. The addition of 10 new retreat units within the 14.9-acre project site is not expected to significantly alter the existing character of the project site or immediately surrounding area, which was formerly utilized as headquarters for the former Pu'uwa'awa'a Ranch. To ensure the preservation of the agricultural character of the project site and surrounding area, it is recommended that the proposed retreat be constructed and operated in a manner that is substantially representative of plans and details contained within the Special Permit application. A condition of this approval recommendation will require Plan Approval review prior to establishing the retreat units within existing or proposed structures. Plans to be submitted for new construction shall reflect structures that are consistent with the low-density style typical of the existing structures in order to preserve the existing character of the area.

The State Department of Land and Natural Resources-Division of Forestry and Wildlife, which owns lands surrounding the project site, did not express any objections to the establishment of the proposed retreat facility. However, that agency did disclose the probability of a shooting range being established at the base of the Pu'uwa'awa'a cinder cone and noted that such an activity may impact guests of the retreat facility. We recommend that a determination of such possible adverse impact be deferred to the State Department or Board of Land and Natural Resources, whichever is appropriate, which have processes in place to assess the appropriateness of establishing such uses on public lands and its potential impacts upon lands and uses within the vicinity. It would be premature and inappropriate to attempt to make such an impact assessment during this proceeding when the actual location and scope of the proposed shooting range has not yet been determined. Any attempt to do so would be speculative. The Planning Department also finds no evidence that the shared use of the access roadway by hunters, ranchers, State personnel and guests of the proposed retreat facility will be cause for potential conflict. Shared use of an existing roadway, whether private or public, occurs everywhere and is not the sole basis for determining the appropriateness of any use. According to the applicant, the State Department of Land and Natural Resources has issued to the applicant a perpetual, non-exclusive easement and right-of-entry over the existing access roadway. Again, this information was disclosed within the application and the State has not contested or objected to the establishment of the proposed retreat facility or the use of its access roadways.

Na Ala Hele has determined that there is conclusive evidence of a series of interconnecting trails that ran from the coastline at Kiholo Bay to the subject property. Surveys reviewed by Na Ala Hele identify one of these trail segments as terminating at the subject property. This trail segment, identified as the Kiholo Puuwaawaa trail, may be classified as a public highway as defined by the Highways Act of 1892. Na Ala Hele staff on the Big Island confirmed that this trail segment is no longer visible on the ground. By letter dated March 4, 2002, the applicant informed the Planning Department that he has spoken with D. Moana Roland of Na Ala Hele and concluded that the establishment of the proposed retreat facility will have *"no effect as to the Permit Request."* Written confirmation of this finding by Na Ala Hele will be required prior to the issuance of Final Plan Approval for the proposed retreat facility.

Based on the above considerations, it is determined that the establishment of 20-unit retreat facility within the project site would promote the effectiveness and objectives of the State Land Use Law.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The initial phase of 10-units of the proposed retreat shall be established within two (2) years from the effective date of this permit. The remaining 10 units shall be constructed and established no later than five (5) years from the effective date of this permit. Prior to establishing each phase of use, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify all existing and proposed structures, parking area(s), access driveway(s) and landscaping associated with the proposed use. New retreat units to be constructed shall be generally similar in style, character and density to that of existing residential structures within the project site. The applicant shall notify the Planning Department, in writing, of the completion of required improvements prior to commencing operation of the proposed retreat.
3. Prior to the issuance of Final Plan Approval for the two existing "A-Frame" houses situated within the project site and encroaching upon State lands, the applicant shall secure the proper approvals and/or easements from the State Department of Land and Natural Resources for the encroachments.



4. Prior to the issuance of Final Plan Approval for any portion of the proposed retreat facility, the applicant shall provide written confirmation from Na Ala Hele that the establishment of the proposed 20-unit retreat facility on the project site will not have an adverse impact upon that portion of the Kiholo Pu'uwa'awa'a trail alignment situated in the vicinity of the project site.
5. The construction of the retreat and the operation of all of its related facilities and activities shall be conducted in a manner that is substantially representative of plans and details as contained with the Application for Special Use Permit, Jerry King, Pu'uwa'awa'a Ranch, Tax Map Key: 3-7-1-01-2.
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 Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
7. Comply with all other applicable laws, rules, regulations and requirements of the affected government agencies for the proposed use, including those of the Departments of Health and Public Works and the Fire Department.
8. If the applicant fails to comply with the conditions of approval or causes complaint(s) relating to any interference or nuisance and is unable to resolve them with the surrounding community or landowners, the Planning Director shall investigate and, if necessary, suspend the permit. The Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicant fails to comply with the conditions of approval or has caused any unreasonable interference or nuisance on the surrounding community, the permit may be revoked.
9. 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.

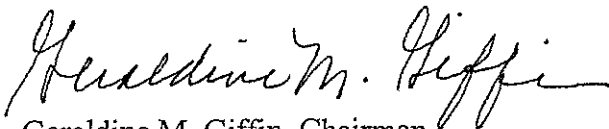
Mr. Jerry King  
Page 10

- 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.

Should you have any questions, please contact Alice Kawaha of the Planning Department at 961-8288 or Daryn Arai of the Kona office at 327-3510.

Sincerely,

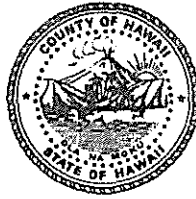


Geraldine M. Giffin, Chairman  
Planning Commission

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

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

August 22, 2006

Roy A. Vitousek III, Esq.  
Cades Schutte  
75-170 Hualalai Road, Suite 303  
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

Special Permit No. 1144

Applicant: Jerry King

Request: Establishment of a 20-Suite Retreat Facility and Related Improvements

Subject: Administrative Time Extension to Comply With Condition No. 2

Tax Map Key: 7-1-1: Portion of 2

This is to acknowledge receipt of your letter dated July 11, 2006 requesting a 5-year administrative time extension to comply with Condition No. 2 for construction of the remaining 10 units. Condition No. 2 of Special Permit No. 1144 states:

- “2. The initial phase of 10-units of the proposed retreat shall be established within two (2) years from the effective date of this permit. The remaining 10 units shall be constructed and established no later than five (5) years from the effective date of this permit. Prior to establishing each phase of use, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify all existing and proposed structures, parking area(s), access driveway(s) and landscaping associated with the proposed use. New retreat units to be constructed shall be generally similar in style, character and density to that of existing residential structures within the project site. The applicant shall notify the Planning Department, in writing, of the completion of required improvements prior to commencing operation of the proposed retreat.”

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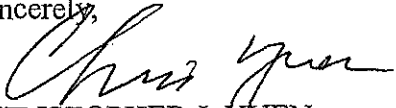
Roy A. Vitousek III, Esq.  
Cades Schutte  
August 22, 2006  
Page 2

Condition No. 9 allows for an administrative time extension for certain circumstances. Based on information stated within your letter regarding adverse health circumstances which have occurred to your client, Jerry King, we will grant a 5-year administrative time extension to **May 6, 2012** to comply the requirement of Condition No. 2.

Please be informed, however, should you need an additional extension of time to comply with Condition No. 2, your request and reasons, along with 20 copies of that request, shall be forwarded to the Planning Commission with a \$100 filing fee. A public hearing will be held by the Planning Commission.

If you have any questions, please feel free to contact Jeff Darrow at 961-8288, ext 259.

Sincerely,

  
CHRISTOPHER J. VUEN  
Planning Director

JWD:smn

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cc w/copy of letter: Planning Commission  
Kona Planning Department

**Roy A. Vitousek III**  
Direct Line: (808) 329-5811  
Direct Fax: (808) 326-1175  
E-mail: rvitousek@codes.com

July 11, 2006

Christopher J. Yuen  
Planning Director  
County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

SP 1141

Re: SPP 01-032; Establishment of a 20-Suite Retreat Facility and Related Improvements; Applicant: Jerry King; TMK: 7-1-1: 2

Dear Mr. Yuen:

This office represents Jerry King. The purpose of this letter is to request a five (5) year extension of time in which to develop the second phase of the retreat facility approved by the Planning Commission in Special Permit Application (SPP 01-032) on May 6, 2002.

Pursuant to conditions of approval at paragraph 2 (page 8) of the May 6, 2002, permit approval, the applicant was to develop the initial phase of 10 units within two (2) years of the date of approval. This initial phase was completed in a timely manner. This paragraph also provides that the remaining 10 units shall be constructed within 5 years of the date of approval.

Paragraph 9 of the conditions provides that the time for performance of conditions may be extended by the Director if certain circumstances occur.

Applicant hereby requests a 5-year extension of time to develop the additional 10 units. This extension is requested primarily because of adverse health circumstances which have occurred with respect to Mr. King. He has been diagnosed with cancer and has undergone surgery and therapy. His condition now appears to be in remission. He has been required, however, to reduce his workload.

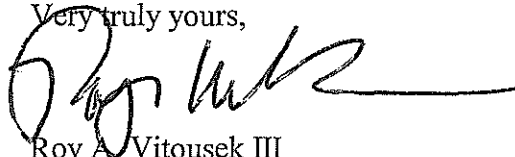
Mr. King has sold a portion of the Pu`u Wa`awa`a property to Henk and Akemi Rogers. They are currently tenants in common with respect to the three parcels. It is their intent to apply for consolidation and resubdivision, but Mr. King will retain an ownership interest in one parcel. The parties have not decided when to proceed with developing the additional 10 units but request an extension of time to allow them to consider options and make decisions in an appropriate, thoughtful manner.

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Christopher J. Yuen  
July 11, 2006  
Page 2

The requested extension is not required because of the applicant's fault or negligence and would not be contrary to the General Plan or Zoning Code. The extension would be consistent with the original reasons for granting the Special Permit.

Very truly yours,



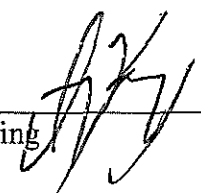
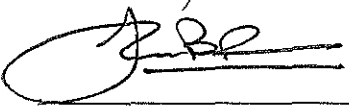
Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

We authorize Cades Schutte LLP to request the extension of conditions in SPP 01-032 on our behalf.

  
\_\_\_\_\_  
Jerry King  
\_\_\_\_\_  
Henk and/or Akemi Rogers

RAV:bah

cc: Jerry King

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