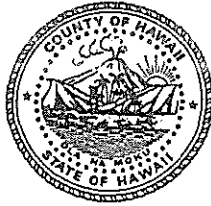


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

October 15, 2004 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

Michael & Misato Mortara
P.O. Box 1161
Volcano, HI 96785

Dear Mr. and Mr. Mortara:

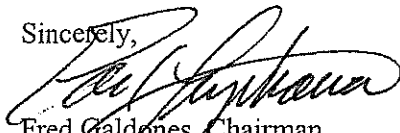
Special Permit Application (SPP 04-001)
Applicant: Michael & Misato Mortara
Request: 1,400 Square Foot Art Studio Building
Tax Map Key: 1-1-17:88 and 89

The Planning Commission at its duly held public hearing on September 16, 2004, voted to adopt the attached Findings of Fact, Conclusions of Law, and Decision and Order regarding the above-referenced request. Special Permit No. 1246 is hereby issued to allow the establishment of an art studio on 39,608 square feet of land situated within the State Land Use Agricultural District. The property is located between the Volcano Highway (State Highway 11) and the old Volcano Road, approximately 200 feet west (Ka'u side) of Alii Kane Street and approximately 1 mile east (Keaau side) of the Volcano Solid Waste Transfer site, Royal Hawaiian Estates Subdivision, Keaau, Puna, Hawaii.

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 questions regarding this matter, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

Lmortara02pc
cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Rodney Haraga, Director/DOT-Highways, Honolulu
Robert & Gladyce Clement

Hawai'i County is an Equal Opportunity Employer and Provider

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OCT 15 2004

Of Counsel:
TSUKAZAKI YEH & MOORE

THOMAS L.H. YEH 2341
85 W. Lanikaula Street
Hilo, Hawaii 96720

(808) 961-0055 (phone)
(808) 969-1531 (fax)

Hearings Officer

PLANNING COMMISSION OF THE COUNTY OF HAWAII

STATE OF HAWAII

In Re: Application of MICHAEL and)
MISATO MORTARA for a special use)
permit on parcels situate at Royal Hawaiian)
Estates Subdivision, Keaau, Puna, Hawaii;)
TMK Nos. (3) 1-1-017:088 and 089)
)
)
)
)
)
)
_____)

SPP No. 04-001

HEARING OFFICER'S
RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER;
CERTIFICATE OF SERVICE

Hearing: August 10, 2004
Hearing Officer: Thomas L.H. Yeh

**HEARING OFFICER'S RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER**

THOMAS L. H. YEH, being the hearing officer appointed in the above-entitled matter, hereby submits his proposed Finding of Fact, Conclusions of Law and Decision and Order. To the extent that the proposed Findings of Fact may also constitute conclusions of law, then the pertinent findings should be treated as such. To the extent that the Conclusions of Law also constitute findings of fact, then the pertinent conclusions should be treated as such.

The Finding of Fact, Conclusions of Law and Decision and Order are based on the entire record of the Planning Commission and the exhibits and testimony received into evidence at the contested case hearing.

I. FINDINGS OF FACT

A. Background

1. This matter involves an application for a Special Permit by Michael and Misato Mortara (“the Applicants”) to allow the establishment and operation of an art studio consisting primarily of a glass art studio and related improvements on a total of 39,608 square feet of land situated within the State Land Use Agricultural District. The property is located between the Volcano Highway (“Highway 11”) and the Old Volcano Road, approximately 200 feet west (“Ka’u side) of Alii Kane Street and approximately one mile east (“Kea’au side”) of the Volcano Solid Waste Transfer site, Royal Hawaiian Estates Subdivision, Keaau, Puna, Hawaii, designated as TMK Nos. (3) 1-1-017:088 and 089 (“Parcels 88 and 89” or “the Property”).

2. The proposed art studio would be contained within an approximately 1,400 square foot structure and consist of a 22' x 34' studio where public viewing of glass blowing would be demonstrated, a 16' x 16' display area where art would be displayed and sold, and a 20' x 16' office. Related improvements would include a parking area.

3. On January 13, 2004, the Special Permit Application was submitted by the Applicants.

4. On January 28, 2004, Robert E. and Gladyce Clement (“the Clements”) submitted a Petition for Standing in a Contested Case Hearing. The Clements' business, Concrete Creations, Inc., owns TMK No. (3) 1-1-017:091 (“Parcel 91”), which is located to the west (Volcano) side and is one lot removed from Parcels 88 and 89.

5. On April 2, 2004, the Planning Commission (“the Commission”) conducted a public hearing on the Application after publication of the Notice of Public Hearing. The Commission heard testimony from the Applicants, Gladyce Clement, and members of the public and voted to approve the Clements’ Petition for Standing in a Contested Case Hearing and to have the contested case hearing conducted by a hearings officer.

B. Procedural Matters

6. THOMAS L. H. YEH was approved as the Hearings Officer in this matter (“the Hearings Officer”). By letter dated June 16, 2004, he informed the Applicants, the

Clements and the Planning Director (“the Parties”), that a pre-hearing conference would be scheduled to discuss the scheduling of the contested case hearing and related deadlines. The opportunity was given to the Clements to participate in the pre-hearing conference by telephone, given their residence in Honolulu.

7. On June 28, 2004, a notice was sent by the Hearings Officer to the Parties or their counsel that a pre-hearing conference would be conducted on July 6, 2004 at 9:00 a.m.. The Clements were again invited to participate either in person or by telephone by calling the Hearings Officer’s phone number.

8. On July 6, 2004, the pre-hearing conference was conducted as scheduled, and the Clements failed to appear in person or to participate by telephone. The contested case hearing was scheduled for Tuesday, August 10, 2004, along with related deadlines for the submittal of exhibit lists and witness lists, and confirmed in writing to the Parties by letter dated July 7, 2004.

9. Notice of Contested Case Hearing was published by the Planning Commission in the Hawaii Tribune-Herald and the West Hawaii Today on July 19, 2004.

10. Prior to the contested case hearing, the Applicants and the Planning Director timely submitted and exchanged their Exhibit Lists and Witness Lists. No exhibit list or witness list was submitted by the Clements.

11. The contested case hearing was conducted by the Hearing Officer on August 10, 2004, at 9:00 a.m., at the Department of Liquor Control Conference Room, Hilo Lagoon Centre, Suite 230, Hilo, Hawaii, pursuant to the Notice of Contested Case Hearing. The Applicants, Michael and Misato Mortara, appeared at the contested case hearing and represented themselves. The County of Hawaii Planning Department is a party to this contested case hearing pursuant to Rule 4-7(a) of the Hawaii County Planning Commission Rules of Practice and Procedure. Deputy Corporation Counsel Bobby Jean Leithead-Todd appeared on behalf of the County. Hugh Jenkins, the Applicant's witness, Bill Thibadeau of the Hawaii County Planning Commission, and Norman Hayashi and Phyllis Fujimoto of the Hawaii County Planning Department were also present at the contested case hearing. The Clements did not appear at the

hearing. Documentary evidence and testimony from witnesses was received into evidence by the Hearing Officer.

12. Hugh Jenkins, the Applicants' witness, is an expert in the art of glass blowing. He testified that the Applicants' glass blowing operation is safe, does not involve the use of toxic materials or gases that would post a danger to the neighboring property or the general public.

C. *The Applicant's Request*

13. ***Request:*** Michael and Misato Mortara are requesting a Special Permit to allow the establishment of an art studio and related improvements on the subject property. The studio will be within a 1,400 square foot structure, which would include:

- a. a 22' x 34' studio area;
- b. a 16' x 16' display area;
- c. a 20' x 16' office area; and
- d. a parking area..

According to the Applicants, the art studio would allow public viewing of artists' work and an area in which to see finished work. The business income ratio is 80% wholesale and 20% retail. Art from the studio would be primarily sold to galleries and retailers. The Applicants anticipate approximately 5-10 visitors per day to the studio including deliveries. The art studio and related improvements will be conducted on two parcels (88 & 89) that are proposed by the Applicants to be consolidated into one parcel.

14. ***Hours of Operation:*** The art studio will be open to the public six days a week from 9:00 a.m. to 5:00 p.m.

15. ***Employees:*** The Applicants have one full-time employee and foresee hiring an additional employee.

16. ***Additional Information:*** The applicants are the landowners of the properties and have submitted letters in support of the request.

17. ***State and County Plans and Zoning:***

- a) **State Land Use Classification:** Agricultural.
- b) **General Plan LUPAG Map:** Orchard.

- c) **County Zoning:** A-1a, minimum one acre.
- d) **SMA:** The project area is not situated within the County's Special Management Area.
- e) **Coastal Zone Management, HRS Chapter 205A:** There are no identified recreational resources, historic resources, scenic and opens space preserves, coastal systems, coastal hazard, marine resources or other natural and environmental resources that will be adversely impacted. Although the Property is located approximately 10 miles from the nearest coastline. The entire island lies within the Coastal Zone Management Area.

D. Description of Property and Surrounding Areas

18. ***Subject Property:*** The properties are located on the north (mauka) side of the Hawaii Belt Road (State Highway 11) between the 23 and 24 mile marker. At this time, Parcel 88 is a wedged shaped lot that consists of 23,089 square feet. Parcel 89 is a rectangular lot that consists of 16,519 square feet. Both properties are vacant and unimproved. Both properties border the Hawaii Belt Road (State Highway 11) and the Old Volcano Road.

19. ***Surrounding Zoning/Land Use:*** To the north of the Property is a large area in Forest Reserve and conservation. To the east is an area in Forest Reserve and further east are lots zoned A-5a and A-3a. To the south, across the Hawaii Belt Road, are lots within the Royal Hawaiian Estates Subdivision zoned A-1a, which consist of 10,000 and 21,500 square foot lots. Further south is the Hawaiian Orchid Isle Estates Subdivision, which consist of lots 3 acres in size zoned A-1a. Lastly, to the west are neighboring properties zoned A-1a. Beyond these lots is a large area in Forest Reserve and conservation and further west is the Volcano Village. There is only one residence near the subject property and it is located directly across the Hawaii Belt Road.

20. ***Proximity to Clements' Property:*** The Applicants also own TMK No. (3) 1-1-017:090 ("Parcel 90"), a 21,366 square foot unimproved parcel which lies between the subject property and Parcel 91, a 10,000 square foot unimproved parcel owned by the

Clements' company, Concrete Creations, Inc. The studio will be located approximately 180 feet from the east boundary of the Clements' property.

21. **Agricultural Uses in Vicinity:** Except for Hawaii Akatsuka Farm, which is a greenhouse operation, there is no known commercial agricultural use of the Property in the immediate vicinity. Northwest of the Clements' property, being TMK No. (3) 1-1-017:094, is a HELCO substation. Except for scattered dwellings, land in the area is unimproved and uncultivated.

22. **Special Permit Approvals:** The Planning Commission has granted special permit approvals in the area for the following:

a) Hawaii Akatsuka Farm, Inc. The Planning Commission approved Special Permit No. 651 on November 17, 1987 to allow the sale of visitor-related goods and hot and pre-made food products within an existing hot house at the Hawaii Akatsuka Farm. TMK No. 1-1-20:165.

b) Ira Ono Kaufman. The Planning Commission approved Special Permit No. 1157 on May 17, 2002 to establish an art gallery, studio and related improvements on approximately 2.71 acres of land. TMK No. 1-9-3:4.

c) There are several bed and breakfast operations that have been approved in the Volcano Village area as well.

23. **U.S.D.A. Soil Type:** The Property is designated Keel extremely rocky muck, 6 to 20 percent slopes (rKGD). In a representative profile, the surface layer is a very dark brown muck about 10 inches thick. It is underlain by pahoehoe lava bedrock. This soil is strongly acid. The soil above the lava is rapidly permeable. The lava is very slowly permeable, but water moves rapidly through the cracks. Runoff is medium and the erosion hazard is slight.

24. **Land Study Bureau Soil Rating:** "E" or Very Poor.

25. **ALISH:** Existing Urban Development.

26. **FIRM:** Zone X, areas determined to be outside the 500-year flood plain.

27. **Flora/Fauna:** According to the Applicant, the flora and fauna consists of both native and non-native species common to the area, primarily small Ohia trees and Staghorn fern.

28. **Archaeological Resources:** According to the Department of Land and Natural Resources-Historic Preservation Division, an acceptable archaeological assessment or inventory survey found no historic properties and review of SHPD records indicates likelihood of historic properties being present is slim. "Thus, we believe that no historic properties will be affected by this undertaking."

29. **Cultural Resources:** There are no known traditional and customary native Hawaiian practices exercised in the area.

30. **Public Access:** There is no public access to the mountains or through the Property.

E. Public Services and Facilities

31. **Access:** The proposed access will be from Hawaii Belt Road (State Highway 11). The applicants have submitted a request for access from the State Department of Transportation. The plan is still being reviewed. According to the submitted site plan, a one-way entrance access for persons traveling in a westerly (Volcano) direction will be directly from the Hawaii Belt Road onto the Property to the parking area. From the parking area, the applicants and customers will only be allowed to exit the Property via the Old Volcano Road. For persons traveling in an easterly (Hilo) direction, ingress and egress will be from the Old Volcano Road.

Were the Department of Transportation to deny the use of the Hawaii Belt Road for access, all ingress and egress would be taken from the Old Volcano Road, the entrance to which is located approximately 3/4 mile west of the subject property. While this will not be as convenient for visitors to access the Property, the Applicants are willing to accommodate traffic in this manner.

32. **Water:** County water is not available at the site. The applicants propose to install a water catchment system.

33. ***Sewage:*** The Property has no access to a County sewer line. Sewage will be disposed of by individual wastewater systems meeting the standards and requirements of the State Department of Health.

34. ***Other Essential Utilities and Services:*** Electrical and telephone lines are available. Police services are available from Keaau. Fire services are available from the Volcano Community Volunteer Fire Station, Kilauea Military Camp or Keaau.

F. Comments from Public Agencies

35. ***Department of Public Works (Memo dated February 20, 2004):***
"We have reviewed the subject application forwarded by your memo dated January 2004 and offer the following comments for your consideration.

a) All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study should be prepared and the recommended drainage system shall be constructed meeting the approval of the Department of Public Works.

b) Any earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.

c) Hawaii Belt Road (HWY 11) and Old Volcano Road are under the jurisdiction of the State of Hawaii."

36. ***Department of Water Supply (Memo dated February 20, 2004):***
"We have reviewed the subject Special Permit application, and the Property does not have an existing water service with the Department as the parcel is beyond the service limits of the Department's existing water system. The applicant indicates in the Special Permit Application that water will be provided via catchment; therefore, the Department has no objections to the proposed application."

37. ***Department of Environmental Management - Solid Waste Division (Memo dated January 26, 2004):*** "Commercial operations may not use transfer stations for disposal. Aggregates and other construction/demolition waste should be reused to its fullest extent. Ample room should be provided for recycling. Greenwaste may be disposed of only at the drop sites located at the Kailua and Hilo transfer stations."

38. **Police Department (Memo dated February 4, 2004):** "Staff has reviewed the above-referenced application and has no comments or objections to offer at this time."

39. **Real Property Tax Office (Memo dated January 27, 2004):** "Comments from the Appraisal Section: There are no comments at this time. Comments from the collection section - Status of real property taxes: Current. Real Property taxes are paid through December 31, 2003."

40. **Department of Land and Natural Resources - Historic Preservation Division (Letter dated December 24, 2004):** "An acceptable archaeological assessment or inventory survey found no historic properties and review of SHPD records indicates likelihood of historic properties being present is slim. "Thus, we believe that no historic properties will be affected by this undertaking."

41. **State Land Use Commission (Letter dated February 9, 2004):** "We acknowledge receipt of your January 23, 2004 memorandum regarding the above subject application. Given the location, scope, and nature of the proposed activity, the State Land Use Commission defers to the judgment of the County of Hawaii in this matter. We have no further comments to offer at this time."

42. **Fire Department:** Memo dated February 10, 2004. Fire apparatus roads shall be in accordance with Uniform Fire Code Section 10.207, and water supply shall be in accordance with Uniform Fire Code Section 10.301.

43. **Department of Health:** Memo dated February 18, 2004. The use of individual waste water system is allowed. Concerns on water quality in private water system have identified the need for self-monitoring. The Department of Health does not support the use of private catchment systems for drinking purposes since the water quality may not meet potable water standards.

44. **Department of Transportation:** Letter dated March 22, 2004. "We do not anticipate that the proposed operation will have a significant impact on our roadway system. However, we have a concern regarding the applicant's desire to add a new access to

Volcano Highway (Route 11). Our Highways Division is currently reviewing the applicant's request for an additional access from the subject property to Volcano Highway (Route 11).”¹

45. *Department Land and Natural Resources - Land Division:* (no comment).

46. *Volcano Community Association:* (no comment).

G. Specific Nature of Applicants' Proposed Operations

47. Michael Mortara has had approximately 25 years of experience in glass art. Aside from minor cuts and burns that have not required medical attention, he has sustained no injuries or ill effects from his work with glass.

48. No toxic gases will be vented from the furnace into the atmosphere. No lead, arsenic or similar toxic compounds are mixed into the raw material or colors used by the Mortaras' operation. The Mortaras use a “cullet” form of raw glass material that is remelted in an insulated furnace. Unlike industrial grade glass, no chemicals are necessary to remove bubble formation.

49. Colors in a premixed form that are fused onto the surface of the glass are used, rather than the method of melting high intensity colors, which can implicate the use of metals.

50. While respirators are used during the melting process, this is to deal with silica dust (primary component of sand), rather than any toxic chemicals, and the glass melting will be indoors. After the glass is melted, it will be shaped and blown in the studio viewing area.

51. The studio activities will not generate excessive noise. While some traffic will be generated by the studio, approximately 5-10 visitors a day are expected as a result of the studio's operation. Most of the visitors are expected to be gallery owners and art collectors. All activities of the studio will be conducted indoors.

¹ A review of vicinity maps indicates that providing access from Volcano Highway (Route 11) may not be “new”, as the configurations of lots on the north side of the highway reflect a plan to have entrances to lots along the highway. For instance, the Clements' lot only has access from the highway, and other lots, such as TMK No. (3) _____, have flag lot configurations where the flag pole portion of such lots abut the highway.

52. The site plan for the Property and landscaping plan anticipates retention of as many of the existing native trees and foliage as possible, and minimal clearing for the building, parking stalls and driveways. For practical reasons and space limitations due to the available turning radius and available parking area, tour buses will not be visiting or invited onto the Property.

53. The design of the building is similar to a small residential type structure.

H. Conditions and Trends

54. Lots in the vicinity range in size from approximately 10,000 square feet to approximately 38,000 square feet. The lots do not conform to the minimum one acre lot size requirements applicable to land zoned A-1a, and given the typical size of lots fronting the Belt highway of 10,000 square feet, the lots are more residential in character.

55. The lots in the subdivision were created prior to the adoption of the current Hawaii County Zoning Code. Due to its classification as agriculture under the LUC system, it has an agriculture designation under the current zoning.

56. Under the Agricultural Lands of Importance to the State of Hawaii ("ALISH") classification, the Property is recognized and classified as Existing Urban Development, and is considered to be better suited for urban or residential use.

57. The Volcano area now has a flourishing art culture comprised of different art themes. Many visitors to the area now visit the art studios in addition to the Hawaii Volcano National Park, and the Volcano area is developing a reputation as a place for experiencing and learning about the arts.

58. The Belt Highway and the Property is located in the Volcano Heritage Corridor, which is named as such for the variety of points of interest along the way. Providing an opportunity for visitors to see glass art being created is consistent with the theme for the Corridor, and will expand visitor and educational opportunities.

I. Comments from Members of the Public

59. Robert E. and Gladyce Clement (Concrete Creations of Hawaii, Inc.) - Submitted a Petition For Standing in a Contested Case (with filing fee), submitted January 28, 2004.

60. The following letters of support have been received by the Planning Department and the Planning Commission:

- a) Hisako Chako Wada
- b) Marian Fieldson
- c) Lorna Jeyte
- d) Elizabeth Ramsey
- e) Margaret Barnaby
- f) Hugh Jenkins
- g) Bill Wenner and Cynee Gillette-Wenner
- h) Kim Miller
- i) R. Chiu Leong and Eva Lee
- j) Clare and Pamela Barton
- k) Randall Takaki
- l) Rob and Susan McGovern
- m) Bruce Winter
- n) Elizabeth R. Paine
- o) Dina Kageler
- p) Ira Ono
- q) Ronald Y. Hanatani
- r) Marilyn Nicholson - Executive Director of
Volcano Art Center

II. CONCLUSIONS OF LAW

1. *HRS Chapter 205-6 provides in pertinent part as follows:*

“§ 205-6. Special permit

(a) The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition.

* * *

(c) The county planning commission may under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter.

A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.”

2. ***Rule 6-6 of the Planning Commission Rules provides that the 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 or Rural District, whichever the case may be; and

(b) Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.”

3. ***Rule 6-3(b)(5) of the Planning Commission Rules provides that in considering how the proposed use would promote the effectiveness and objectives of Chapter 205 and constitute an unusual and reasonable use of the land, the following criteria should be addressed:***

“6-3 Petition and Content.

(5) A statement of the reasons for the granting of the Special Permit citing how the proposed use would promote the effectiveness and objectives of chapter 205, HRS, and why the proposal is an unusual and reasonable use of the land. The following criteria shall also be addressed:

(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; and

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

Rules 6.3(5)(A) - (D) of the Planning Commission Rules of Practice and Procedure reiterate Hawaii Administrative Rules (“HAR”) Section 15-15-95(b)(1) - (5) and also require that a petition for a special permit establish that:

(a) The proposed use will not substantially alter or change the essential character of the land and the present use; and

(b) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

H.R.S. Section 205-6(d) and HAR Section 15-15-95(b) delegate the authority to grant special permits to the County Planning Commission for proposals involving less than 15 acres.

The Proposed Use is consistent with the following objectives, goals and standards set forth in the Hawaii County General Plan:

Economic:

Goals:

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- The County shall strive for diversification of its economy by strengthening industries and attracting new endeavors.
- The County shall provide an economic environment with 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.

Policies:

- The County shall strive for an economic climate which provides its residents an opportunity for choice of occupations.
- The County of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical, and economic goals for the residents of the County.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industry and attracting new endeavors.

Standard:

- The Island of Hawaii should be developed into a unique scientific and cultural model. The island should become a model of living where economic gains are in balance with social and physical amenities. Development should be reviewed on the basis of total impact on the residents of the County, not only in terms of immediate short run economic benefits.

Land Use - Agriculture Goal:

- Identify, protect and maintain important agriculture lands on the island of Hawaii.

Approval of the Special Permit would foster the economic goals and policies of the Hawaii County General Plan by encouraging the expansion of economic opportunities that are compatible with the natural and social environment of the Volcano community in its continuing efforts to attracting new endeavors.

4. ***The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program.*** According to the applicant, the flora and fauna consists of both native and non-native species common to the area, primarily small Ohia trees and Staghorn fern. According to the Department of Land and Natural Resources - Historic Preservation Division, an acceptable archaeological assessment or inventory survey found no historic properties and review of SHPD records indicates likelihood of historic properties being present is slim. They believe that no historic properties will be affected by this undertaking. There is no designated public access to the mountain or coastal areas over this parcel. The Property is located over ten

miles from the nearest shoreline and in an agricultural/residential area. The proposed project will not impact any recreational, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the Property will not be affected by any coastal hazards nor beach erosion. Finally, the art studio would not significantly obstruct any makai views or significantly affect view planes.

5. ***The desired use will not adversely affect the surrounding properties.***

The Property is located within the Royal Hawaiian Estates Subdivision which is zoned Agricultural (A-1a) by the County. Uses in the area consist of farm dwellings and vacant land. The proposed consolidated property will contain a 1,400 square foot art studio that will have a display area, studio area and office. Studio activities will be conducted indoors with a minimum of noise from the operations. The applicants anticipate approximately 5-10 visitors a day including deliveries. To the north and east of the project site is Forest Reserve and to the south is the Hawaii Belt Road. The only neighboring properties are located to the west. There is one residence in the area located directly across the Hawaii Belt Road. The applicants also own Parcel 90, which is the nearest property to the west, that creates an additional buffer from the nearest neighboring properties. The Property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical, social or other impacts that this proposed use may have on the area. A condition will be added restricting hours of operation from 9:00 a.m. to 5:00 p.m. Landscaping and visual buffers will also be required. Much of the current vegetation will be retained and the studio will have the appearance of a residential structure.

6. ***The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection.*** The Property has access to telephone and electrical utilities. Water will be provided by a catchment water tank system. The amount of traffic will be minimal and within the capability of the existing paved roads. The applicants have submitted a request for access from the Hawaii Belt Road (State Highway 11) from the State Department of Transportation. According to the submitted site plan, a one-way entrance access for persons traveling in a westerly (Volcano) direction will be from the Hawaii Belt Road onto the Property to the parking area. From the parking area, the applicants and customers will only be allowed to exit onto the Old Volcano Road. For persons traveling in an easterly (Hilo) direction, ingress and egress will be from the Old Volcano Road.

A condition will be added requiring that approval be secured from the Department of Transportation prior to allowing access from the Hawaii Belt Road. Otherwise, access will be permitted only from the Old Volcano Road. In addition, the proposed use will not generate concerns for additional services as reflected by the agencies' responses. The proposed location will assist in serving the Volcano area by providing additional educational, cultural and recreational benefits for the immediate community and the island as a whole. This type of public benefit with minimal impact to the surrounding community is consistent with the social and physical character of a rural agricultural area and contributes to the economy of the County.

7. ***Conditions and Trends.***

a) Property in the Royal Hawaiian Estates Subdivision range in size from approximately 10,000 square feet to approximately 38,000 square feet. The lots do not conform to the minimum one acre lot size requirements applicable to land zoned A-1a, and given the typical size of lots fronting the Belt highway of 10,000 square feet, the lots are more residential in character.

b) The lots in the subdivision were created prior to the adoption of the current Hawaii County Zoning Code. Due to its classification as agriculture under the LUC system, it has an agriculture designation under the current zoning.

c) Under the ALISH system, the Property is recognized and classified as Existing Urban Development.

d) The Volcano area now has a flourishing art culture comprised of different art themes. Visitors to the area now visit the art studios in addition to the Volcano, and the Volcano area is developing a reputation as a place for experiencing and learning about the arts.

The Belt Highway and the Property is located in the Volcano Heritage Corridor, which is named as such for the variety of points of interest along the way. Providing an opportunity for visitors to see glass art being created is consistent with the theme for the Corridor, and will expand visitor and educational opportunities.

8. ***The land upon which the proposed use is sought is not suitable for the uses permitted within the district.*** The soils within the project area are not suitable for many types of agricultural uses. The United States Department of Agriculture's Soil Survey Report classifies soils within the project site as Keei extremely rocky muck, 6 to 20 percent slopes

(rKGD). The Land Study Bureau's Detailed Land Classification System indicates the soils within the subject property are classified as "E" or Very Poor. The nature of the request is to allow for the establishment of an art studio with an area for parking. The undeveloped area consists primarily of the native rain forest Ohias and Staghorn fern. The future structure and use will not remove any significant agricultural land from the existing inventory.

9. ***The use will not substantially alter or change the essential character of the land and the present use.*** The art studio will be located entirely within a 1,400 square foot structure on the site. There will be a parking area for employees and customers. No existing area for agricultural activities will be curtailed or diminished as a result of the establishment of this activity on the Property. Further, the proposed use does not preclude the other portions of the Property from continuing to be used for agricultural purposes by the owner. The proposed use will not have a substantial impact on the agricultural resources of the area or the County of Hawaii.

10. ***The request is not contrary to the General Plan.*** The Property is within area designated as Orchards by the General Plan Land Use Pattern Allocation. Guide (LUPAG) Map. The soil classification rating for the subject area is "E" or "Very Poor" by the Soil Conservation Service Soil Survey Report. The request would support the General Plan's goals and policies of the Economic and Land Use Elements of the General Plan which are to: "Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County" and to " ... encourage the development and maintenance of the communities meeting the needs of its residents in balance with the physical and social environment."

11. ***The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights.*** The Property is not adjacent and/or proximate to the shoreline. As such, gathering of marine life and coastal access is not an issue. The applicants state that there are no known established valued cultural rights being exercised on the properties.

a) ***Investigation of resources.*** An acceptable archaeological assessment or inventory survey was submitted to the Department of Land and Natural Resources-SHPD which found no historic properties on the parcels.

b) *The valuable cultural, historical and natural resources found in the Property area.* As commented by the State Department of Land and Natural Resources Historic Preservation Division, an acceptable archaeological assessment or inventory survey found no historic properties and review of SHPD records indicates likelihood of historic properties being present is slim. DLNR-SHPD believes that "no historic properties will be affected by this undertaking."

c) *Possible adverse effect or impairment of valued resources.* As stated by the State Department of Land and Natural Resources Historic Preservation Division, "they believe that no historic properties will be affected by this undertaking."

d) *Feasible actions to protect native Hawaiian rights.* As stated by the applicant, there are no known established valued cultural rights being exercised on the properties.

12. ***The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended, and is a unusual and reasonable use of the land.*** 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. The proposed project will be located within an area whose soils are classified "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and "Existing Urban Development" by the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii ("ALISH") Map.

In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and 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 Property is situated within the County's Agricultural (A-1a) zone district and is not well suited for agricultural activity. The proposed art studio will be within a 1,400 square foot structure, which would include a 22' x 34' studio area, a 16' x 16' display area, a 20' x 16' office area. There will also be a parking area for employees and customers. The

Property, after consolidation, will be a total of 39,608 square feet in size, a size not conducive to agricultural activity of a commercial scale. Impacts from the studio will not be substantial or adversely affect neighboring properties.

Based on the above circumstances, approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions. The proposed use would not displace existing agricultural activity since this parcel has not been in major agricultural use.

III. DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, the proposed art studio and related improvements is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations, and Special Permit Application No. SP 04-001 is hereby approved 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 the revocation of the Special Permit by the Planning Commission.

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The art studio and related improvements shall be established within five (5) years from the effective date of this permit. Prior to the establishment of this use, Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code pertaining to Plan Approval and the Planning Department's Rule 17 (Landscaping Requirements). Plans shall identify all existing structures, proposed parking areas and driveway(s), adequate turnaround areas for emergency vehicles, lighting, and landscaping to mitigate any visual or noise impacts. Plans shall include landscaping along property boundaries for the purpose of mitigating any potential adverse noise and visual impacts to surrounding properties. Signage shall be approved through the plan approval process consistent with the Sign Code. Native species from the area shall be used when possible.
3. The hours of operation for the proposed use shall be limited from 9:00 a.m. to 5:00 p.m.

4. Access from the Hawaii Belt Road (State Highway 11) will be permitted only upon approval from the Department of Transportation, provided that only a right ingress will be allowed from the Hawaii Belt Road. Should the Department of Transportation not permit ingress from the Hawaii Belt Road, both ingress and egress shall be through the Old Volcano Road entrance to the Property. The applicant will be required to comply with the requirements of the Department of Transportation as they may pertain to the Hawaii Belt Road and/or the Old Volcano Road. In the future, if the old Volcano Road intersection on the Hilo side of the Mortara property is improved, the ingress on their property will be removed and access will be through the old Volcano Road.

5. Parcels 88 & 89 shall be consolidated into one parcel prior to the opening of the art studio.

6. Should any unidentified sites or remains such as lava tubes, 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 - Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent Work shall proceed upon an archaeological clearance from the (DLNR-HPD) when it finds that sufficient mitigative measures have been taken.

7. The applicant shall comply with all applicable laws, rules regulations and requirements of other affected agencies, including the Department of Public Works, the Department of Health and Fire Department.

8. Water for drinking purposes should be provided through an appropriate water purification system, or separately provided from commercial sources.

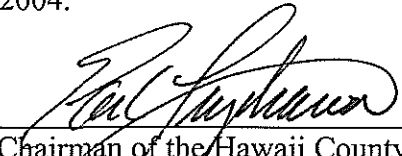
9. An initial extension of time for the performance of conditions w n the permit may be granted by the Planning Director upon the following circumstances:

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 original reasons for the granting of the permit.

C. 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).

DATED: Hilo, Hawaii, October 15, 2004.

By 
Chairman of the Hawaii County
Planning Commission