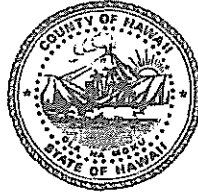


Harry Kim
Mayor



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

December 20, 2006

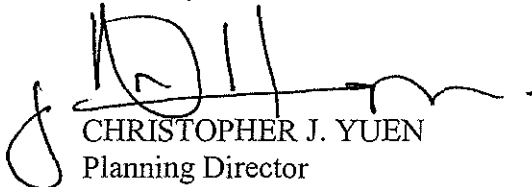
Pat Fay and Mary Roblee
HCR 1, Box 5221
Keaau, HI 96749

Dear Ms. Fay and Ms. Roblee:

Special Permit Application (SPP 06-000032)
Applicant: Pat Fay and Mary Roblee
Request: Establish 3-Room Bed and Breakfast Operation
Tax Map Key: 1-5-59:28

Enclosed is the Planning Commission's Findings of Fact, Conclusions of Law and Decision and Order regarding the above-referenced application which was approved by the Commission on November 1, 2006.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

Lfayroblee01pc
Enclosure

cc/enc: Department of Public Works
Department of Water Supply
Ivan Torigoe, Esq.
Amy Self, Esq.
Real Property Tax Office
Department of Health
State Land Use Commission
Department of Transportation-Honolulu
Ms. Janie Lai

PLANNING COMMISSION OF THE COUNTY OF HAWAI'I

STATE OF HAWAI'I

Application of)	SPP 06-0000032
)	
PAT FAY AND MARY ROBLEE,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND DECISION AND ORDER
Special Permit to allow the establishment of a)	
2-bedroom bed and breakfast within an)	
existing single family dwelling located on 0.5)	
acre of land situated within the State Land)	
Use Agricultural District. The property is)	
located along the west (mauka) side of)	
Paradise Ala Kai Street, approximately 1 mile)	
from its intersection with Paradise Drive,)	
Hawaiian Paradise Park Subdivision, Kea'au,)	
Puna, Hawai'i. TMK: 1-5-59:28)	
_____)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

Background

PAT FAY & MARY ROBLEE (hereinafter, "Applicants") have submitted an application for a Special Permit to allow the establishment of a 2-bedroom bed and breakfast within an existing single family dwelling located on 0.5 acre of land situated within the State Land Use Agricultural District. The property is located along the west (mauka) side of Paradise Ala Kai Street, approximately 1 mile from its intersection with Paradise Drive, Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i. TMK: 1-5-59:28.

The County of Hawai'i Planning Commission (hereinafter, "Planning Commission") reviewed evidence and heard testimony from Applicants and Intervenors Janie and Larry Lai for Lai Lin Family Trust (hereinafter, "Intervenors"), at contested case hearings held on

November 1, 2006 at the County of Hawai'i Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i. The Planning Director was also a party to the hearings pursuant to Planning Commission Rules of Practice and Procedure (hereinafter "Commission Rule") 4-7(a). All Commissioners voting on the instant Special Permit have either attended all hearings and/or reviewed the entire record and files herein.

The Commission, having considered the entire record, and having heard and considered the arguments of the parties, makes the following findings of fact, conclusions of law, and order.

APPLICANTS' REQUEST

1. Request: The Applicants, who reside on the property, are requesting a Special Permit to allow a 2-bedroom bed and breakfast operation in an existing 3-bedroom home. The 3-bedroom/2-bathroom dwelling was constructed in 1993 as an approved ohana dwelling. There are two dwellings constructed on the property. The Applicants intend to serve cereal, pastries (except custards or cream filled), breads, fruits, coffee, tea, and juice in compliance with Department of Health's Guidelines for Bed and Breakfast Operators. The Applicants originally applied for a 3-room bed and breakfast operation, but revised their request to 2-room bed and breakfast operation by letter dated August 4, 2006.

2. Objectives: The Applicants' objective is to provide alternative accommodations for visitors who visit the Big Island of Hawai'i.

3. Employees: The Applicants intend to be the only employees.

4. Parking: Off-street parking is available for the guests of the bed and breakfast operation and for the residences.

5. Supportive Information: A Special Permit is required to operate a bed and breakfast establishment in the State Land Use Agricultural District. The Applicants, who are the

listed owners, submitted a completed Special Permit application in support of the request:

(Planning Department Exhibit 1 - Special Permit Application)

BACKGROUND INFORMATION

6. Ohana Dwelling Permit: On May 10, 1993, Ohana Dwelling Permit No. 3136 was issued to allow the construction of an ohana dwelling on the subject property. At that time, the Planning Department allowed ohana dwellings in the State Land Use Agricultural district, but they are not allowed anymore. **(Planning Department Exhibit 2 – Ohana Dwelling Permit No. 3136)**

7. SMA Minor Permit: On April 6, 2006, Special Management Area Minor Permit No. 06-000027 was issued to the Applicants to establish a 3-Room Bed and Breakfast within the existing Ohana Dwelling. The Applicants have since revised their request for a 2-Room B&B.

(Planning Department Exhibit 3 - SMA Minor Permit No. 06-000027)

OTHER B&B OPERATIONS IN THE AREA

8. Special Permit No. 730: The Planning Commission approved the establishment of a 2-bedroom bed and breakfast operation within an existing single family dwelling on May 3, 1990 to Laura Richman and Stephen Peyton. This is located within Hawaiian Paradise Park on the corner of Paradise Drive and 4th Street, approximately one mile from this proposed request.

9. Special Permit No. 06-000023: The Planning Commission approved the establishment of a 1-bedroom bed and breakfast operation within an existing single family dwelling on May 5, 2006 to Jimmy W. Lee and Sui Ping Chan. This is located within Hawaiian Paradise Park on the southwest corner of Maku‘u Drive and 10th Avenue, approximately two and half miles from this proposed request.

DESCRIPTION OF STATE AND COUNTY PLANS

10. State Land Use: Agricultural.
11. County Zoning: Agricultural-1 acre (A-1a).
12. GP LUPAG MAP: Rural.
13. Coastal Zone Management, HRS, Chapter 205A: The entire State of Hawai'i lies within the Coastal Zone Management area. The intent of the Coastal Zone Management Program is to guide and regulate public and private uses in the coastal zone management area with respect to recreational resources, historic resources, public access to the shoreline, scenic and open space resources, coastal ecosystems, marine resources, economic uses, coastal hazards, managing development, public participation, and beach protection.
14. Special Management Area (SMA): The Special Management Area is a part of the Coastal Zone Management Program and regulated by the County. The property is located within the Special Management Area and is approximately 300 feet from the nearest shoreline. A SMA Minor Permit was issued for the proposed use.

DESCRIPTION OF PROPERTY AND SURROUNDING AREAS

15. Subject Property: The property is located in the Hawaiian Paradise Park Subdivision. It is rectangular in shape and is .5-acre in size. There is an existing 1-story, 2-bedroom/1-bathroom dwelling on-site that will be used as a rental and an existing 2-story, 3-bedroom/2-bathroom ohana dwelling that will be used for the bed and breakfast operation.
16. Building Permits: According to records on file with the Building Division, the following building permits have been issued for the property:
 - **Building Permit No. 930950:** Issued on May 24, 1993 for a 1-story, 2-bedroom single family dwelling. Finalized on October 14, 1993.

- **Building Permit No. 932541:** Issued on November 8, 1993 for a 2-story, 3-bedroom ohana dwelling. Finalized on November 20, 1995.
- **Building Permit No. 940805:** Issued on June 15, 1994 for concrete water tank. Finalized on June 5, 2003.

17. **Surrounding Zoning/Land Uses:** Surrounding properties in this area of the Hawaiian Paradise Park Subdivision are ½-acre in size and are zoned Agricultural (A-1a). Uses in the surrounding area consist of vacant lands and scattered single-family dwellings. According to building permit records, the closest dwellings are located on TMK: 1-5-59: 17, and on TMK: 1-5-59: 29, which border the property to the southwest and south, respectively.

18. **Land Study Bureau's Detailed Land Classification System:** Soil within the property is classified as “E” or “Very Poor” for agricultural productivity.

19. **Soil Survey:** Soil is classified as rLW (lava flows, Pahoehoe).

20. **ALISH:** Unclassified.

21. **Flora/Fauna and Archaeological Resources:** The property has been developed with two dwellings and landscaped with numerous fruit trees and ornamental plants, such as hibiscus. The likelihood of any rare or endangered species, habitat or flora on the property is remote. The applicants have requested a “no-effect” letter from the Department of Land and Natural Resources-State Historic Preservation Division and have not received a response as of this writing.

22. **Cultural Resources:** There is no evidence of traditional and customary Native Hawaiian Rights being practiced on the property. The applicants have not observed the property being used by native Hawaiians for the gathering of plants.

23. Public Access: There is no public access to the mountains or the shoreline that run through the property.

24. FIRM: The property is located within Zone X, an area outside the 500-year flood plain. The property falls within the Civil Defense Agency's tsunami evacuation area and is identified as an area of "minimal tsunami inundation."

PUBLIC UTILITIES AND SERVICES

25. Access: Access to the site is from Kea'au-Pāhoa Road (State Highway 130) to Paradise Drive onto Paradise Ala Kai Drive, a private roadway with a pavement width of 12 feet within a 40-foot right-of-way. All roads within Hawaiian Paradise Park are private.

26. Water: The property is serviced by a private water catchment system.

27. Wastewater System: Wastewater is presently disposed of into an existing septic system.

28. Police and Fire Services: Police and fire facilities are available in both Kea'au and Pāhoa, approximately six miles distant from the property. There is a volunteer fire station located on TMK: 1-5-40:65 on the corner of 21st Avenue and Paradise Drive.

29. Utilities: Electrical and telephone services are available to the property.

AGENCIES' COMMENTS

30. Department of Public Works – (August 14, 2006 Memo):

"We have reviewed the subject application forwarded by your memo dated July 17, 2006 and have no objections to the request. The subject parcel is in an area that is not mapped by the Federal Emergency Management Agency and is identified as an area of "minimal tsunami inundation."

31. Police Department (August 2, 2006 Memo):

“Staff, upon reviewing the provided documents and visiting the proposed site, does not anticipate any adverse public safety concerns.”

32. Fire Department (July 24, 2006 Memo)

“We have no comments to offer at this time in reference to the above-mentioned Special Permit request.”

33. Department of Water Supply: **(Planning Department Exhibit 4 – July 27, 2006 Memo)**

34. Department of Environmental Management: **(Planning Department Exhibit 5 – July 18, 2006 Memo)**

35. Department of Health: **(Planning Department Exhibit 6– August 4, 2006 Memo)**

36. Land Use Commission: **(Planning Department Exhibit 7– August 1, 2006 Letter)**

AGENCIES - NO RESPONSE

37. Department of Land and Natural Resources –Land Division and State Historic Preservation Division.

APPLICANT'S RESPONSE TO COMMENTS

38. The Applicants have submitted response letters to comments received from the governmental agencies. **(Planning Department Exhibit 8 – Letters dated August 8 & 11, 2006 from the Applicants)**

PUBLIC COMMENTS

39. The Planning Department has received a Petition for Standing in a Contested Case from:

- 1) Janie and Larry Lai for Lai Lin Trust: **(Planning Department Exhibit 9 – Petition submitted by Janie and Larry Lai).**

40. The Planning Commission granted standing as intervening parties to a contested case to the Intervenors. Presiding Officer William Graham held a prehearing conference with the Janie Lai representing Intervenors, on October 12, 2006. The parties agreed as follows:

- 1) The parties agreed to mail or deliver to other parties and the Planning Department: (a) Witness lists, including names, addresses, substance of testimony, and expert status; (b) Exhibit list and proposed exhibits; and (c) any written testimony or written argument, by October 20, 2006.

- 2) If any party wishes to present rebuttal exhibits, documents or written testimony/argument, they should send email notice and copy if feasible to the other parties and Mr. Hayashi by October 27, 2006.

- 3) If any party wishes to present further documents on the date of the hearing, they must provide original + 15 copies and 1 copy for each other party.

- 4) Ms. Lai is not planning to attend the hearing on November 1, 2006 in person. The parties agreed that she may present written testimony, exhibits and written argument in lieu of appearing.

- 5) Mr. Hayashi will be emailing witness and exhibit list forms for parties' use.

- 6) Planning Commission Rule 6 may be found at:

<http://co.hawaii.hi.us/planning/rules/PC%20Rules.pdf>

41. The parties submitted written testimony and exhibits in accordance with the foregoing agreements, all of which were admitted into evidence at the contested case hearing on November 1, 2006.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission makes the following Conclusions of Law, including mixed conclusions of fact and law.

1. The Commission has jurisdiction over this Special Permit application pursuant to Hawai'i Revised Statutes (hereinafter, "HRS") Section 205-6.
2. Pursuant to HRS Section 205-6, and Planning Commission Rule 6.6., 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, Hawai'i Revised Statutes, as amended.
3. In considering the Special Permit application, the Commission shall also consider the criteria listed under Commission Rules Section 6.3(b)(5)(A) through (G), which are:
 - 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.

4. The Planning Director shall advise the Planning Commission on all planning and land use matters, pursuant to Hawai'i County Charter Section 6-4.2(a). The Planning Director recommended approval of the instant Special Permit application. The Planning Commission majority by a 6-0 vote agreed with the Planning Director's recommendation, and incorporates herein the Planning Director's reasoning, as stated in the following findings of fact, and mixed findings of fact and conclusions of law.

5. The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i 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 Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. This property is situated on land characterized as Pahoehoe lava. The use will be located within the existing single family dwelling which is situated within an area where soils are classified as "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating and designated as "Unclassified" by the Department of Agriculture's ALISH Map. The proposed bed and breakfast use will be subordinate and incidental to the principal use of the residence by the applicants. The two-bedroom bed and breakfast operation will be confined to one of two existing single-family dwellings constructed on-site. The remainder of the property will be landscaped with numerous fruit trees and ornamental plants such as hibiscus. The proposed use will not displace existing

agricultural activity or diminish the agricultural potential of the subject property. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

6. The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District. 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 subject property is approximately 0.5 acre in size and situated within the County's Agricultural (A-1a) zoned district. The applicants currently reside in the existing dwelling proposed for the bed and breakfast operation as their primary residence. The other dwelling constructed on-site will be used as a rental. As previously stated, the two-bedroom bed and breakfast operation will be confined to one of the existing dwellings. Even though the soil type and classification for the property are poor, the applicants have fruit trees and ornamental plants on a portion of the property. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land.

7. The desired use shall not adversely affect the surrounding properties. The existing single family dwelling is situated on a portion of a 0.5-acre parcel. Surrounding properties in this area of the Hawaiian Paradise Park Subdivision are 0.5-acre in size and are zoned Agricultural (A-1a). Uses in the surrounding area consist of vacant lands and scattered single-family dwellings. The nearest dwellings are located on the properties to the south and southwest. There will be no employees other than the applicants associated with the bed and

breakfast operation. Due to the minimal size of the operation, it is not anticipated that the proposed use will adversely affect the surrounding properties.

8. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. It is anticipated that traffic to be generated by the proposed two-bedroom bed and breakfast facility would be minimal. Access to the site is from Kea'au-Pāhoa Road (State Highway 130) to Paradise Drive onto Paradise Ala Kai Drive, a private roadway with a pavement width of 12 feet within a 40-foot right-of-way. All roads within Hawaiian Paradise Park are private. The Department of Public Works did not express any concerns regarding the proposed use. There is no municipal sewer system in the subdivision. The applicants currently utilize an existing septic system. County water is not available to the subject site. The applicants rely on water catchment in conjunction with the residence. The Fire Department has expressed no concerns over this application other than the fire department connection to the water tank be located in an area accessible by fire apparatus. As a condition of approval, bottled drinking water will be made available to the guests. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain, and is identified as an area of "minimal tsunami inundation." Additionally, a condition of approval will include that the applicants meet all applicable County, State and Federal laws, rules, regulations and requirements.

9. The proposed use will not substantially alter or change the essential character of the land and the present use. The proposed request of a two-bedroom bed and breakfast operation will be conducted within an existing single-family dwelling located on-site. The character of the surrounding lands is predominantly vacant with scattered single-family residential uses. The applicants currently reside within the existing dwelling on the property. The

proposed use is considered accessory to the single-family dwelling. Therefore, the proposed request is considered an unusual and reasonable use of the agricultural land and will not substantially change the essential character of the land and the present use.

Intervenors raised concerns regarding the possibility of an approval of the application “opening the door” to other applications in the area. However, each application is considered on its own merits. And as stated above, bed & breakfasts of the small scale of this case do not normally present materially greater impacts of traffic, utilities, wastewater and noise than residential uses, which can involve large or extended family use.

10. The request is not contrary to the General Plan’s Land Use Pattern Allocation Guide (LUPAG) Map that defines the subject property and immediately surrounding area for Rural. The request is not contrary to the goals, policies and standards of the General Plan. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property where the proposed request would be located is designated as Rural, includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The proposed request is consistent with the General Plan designation for this area.

The approval of the subject request would support the goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix 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.
- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawai‘i.
- 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 Hawai‘i shall strive for an economic climate which provides its residents an opportunity for choice of occupation.
- The County of Hawai‘i shall encourage the development of a visitor industry which is consistent with the social, physical and economic goals of the residents of the County.

The proposed request will allow the applicants an opportunity to improve their quality of life, provide an economic environment which allows this new, economic opportunity and increase the development of the visitor industry for Hawai‘i. Thus, the proposed request is consistent with the Land Use and Economic goals and policies of the General Plan.

11. The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai‘i Revised Statutes, relating to coastal zone management program. Given the fact that the property has been developed with two existing residences and agricultural uses,

it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. There is no designated public access to the mountain areas over the property. It is adjacent to existing residences and vacant lands. The property is located within the Special Management Area and is approximately 300 feet from the nearest shoreline. A SMA Minor Permit was issued for the proposed use. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

12. Based on the above considerations, the proposed 2-room bed and breakfast establishment within an existing single family dwelling 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.

13. Approval of this request is subject to the following conditions:

1. The applicants, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicants shall comply with all applicable requirements of Section 25-4-7 of the Zoning Code, as amended by Ordinance No. 00 152, relating to Bed and Breakfast Establishments.
3. The bed and breakfast operation shall be limited to the use of two (2) bedrooms.
4. The applicants shall provide bottled water for guests of the bed and breakfast operation.
5. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

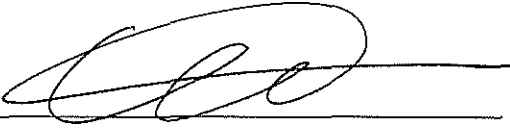
Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, Application SPP No. 06-000032 for a Special Permit to allow the establishment of a 2-bedroom bed and breakfast within an existing single family dwelling located on 0.5 acre of land situated within the State Land Use Agricultural District is hereby GRANTED.

DATED: Hilo, Hawai'i, December 19, 2006.

By: _____


C. Kimo Alameda, Chairman
Planning Commission