

County of Hawai'i

PLANNING COMMISSION

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

November 9, 2006

Donald Graf and Kay Lee
P.O. Box 216
Hawaii National Park, HI 96718

Dear Mr. Graf and Ms. Lee:

Special Permit Application (SPP 06-000038)
Applicant: Donald Graf and Kay Lee
Request: Establish and 4-Bedroom Bed and Breakfast Operation
Within the State Land Use Agricultural District
Tax Map Key: 1-9-19:23

The Planning Commission at its duly held public hearing on November 1, 2006, voted to approve the above-referenced application to allow the establishment of a 4-bedroom bed and breakfast operation within an existing single family dwelling on 1.138 acres of land within the State Land Use Agricultural District. The property is located along the southwest side of Road E, approximately 200 feet from the Road E – Laukapu Road intersection, Volcano Cymbidium Acres Subdivision, Olaa, Hawaii.

Approval of this request is based on the following:

The applicants, who reside on the property, are requesting a Special Permit to allow a 4-bedroom bed and breakfast operation on the subject property, which has an existing 2-bedroom dwelling that was constructed in 1994. The applicants are proposing to add three additional bedrooms to the dwelling. The applicants will reside in one bedroom and the remaining four bedrooms will be used by guests of the bed and breakfast operation. The applicants intend to be the only employees. Their objective is to provide accommodations for visitors who visit the Big Island of Hawaii, specifically the Volcano area.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special

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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) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the 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 1.138 acres in size and situated within the County's Agricultural (A-20a) zoned district. The applicants currently reside in the existing dwelling proposed for the bed and breakfast operation as their primary residence. The 4-bedroom bed and breakfast operation will be confined to the existing dwelling. The soil type and classification for the property is poor. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land.

The granting of this request would 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 for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The property is situated on land characterized as Keei extremely rocky muck. The use will be located within the existing single family dwelling which is situated within an area where soils are classified as "D" or "Poor" by the Land Study Bureau's Overall Master Productivity Rating and is 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 4-bedroom bed and breakfast operation will be confined to the existing single-family dwelling on-site. The proposed use will not displace any 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.

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

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous

discussion listed above, mainly because the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands that is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The property is located in the Volcano Cymbidium Acres Subdivision. It is 1.138-acres in size with an existing dwelling that will be used for the bed and breakfast operation. The use will be conducted within the existing dwelling. The remainder of the property is vacant with ohia and hapuu, along with assorted ferns and bedded plants. The surrounding area is zoned A-20a and consists of vacant parcels and scattered dwellings. The nearest dwellings are located on the adjoining parcel to the southwest and on a property directly across Road E. In addition, there have been no objections or concerns received from the surrounding property owners regarding this request. It is not anticipated that the requested use will have an adverse affect on the surrounding properties. Based on the above information, the applicants have met this criterion.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The applicants have met this criterion. The requested use will not burden public agencies to provide additional services. Access to the property is available from Road E, which is a private easement that has a 20-foot wide pavement within a 40-foot right-of-way. Electricity and telephone are available to the property. There is no municipal sewer system in the subdivision. The applicants currently utilize an existing cesspool 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 no concerns regarding this application other than that 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. Additionally, a condition of approval will include that the applicants meet all applicable County, State and Federal laws, rules, regulations and requirements.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may

establish various "non-agricultural" services that may not be available or allowed by zoning for its residents. The request to allow a 4-bedroom bed and breakfast operation in this area is in line with the intent for allowing the issuance of a Special Permit. Based on the above discussion, the applicants have met this criterion.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Keei extremely rocky muck, classified as "D" or "Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. Additionally, the proposed request will be conducted entirely within an existing dwelling located on the property. Based on the above information, the applicants have met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed request will be conducted within an existing dwelling located on the 1.138-acre parcel. The proposed request will not substantially alter or change the essential character of the land or its present use. The applicants have met this criterion.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. 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 is located in area identified as Extensive Agricultural in the General Plan. Extensive Agricultural is defined as lands not classified as Important Agricultural Land and includes lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. Other less intensive agricultural uses such as grazing and pasture may be included in the Extensive Agriculture. As the property is unclassified by the Department of Agriculture's ALISH Map and is classified as having "D" or "Poor" soil by the Land Study Bureau's Overall Master Productivity Rating, the request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area. Additionally, 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.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawaii.
- Provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The proposed request will allow the applicants an opportunity to improve their quality of life, provide an economic environment that allows this new, economic opportunity and increase the development of the visitor industry for Hawaii.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes, relating to coastal zone management program. Given the fact that the property has been developed with a residential dwelling, 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 not located within the Special Management Area. 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.

Based on the above considerations, the proposed 4-bedroom bed and breakfast operation 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.

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. Construction of the proposed additions to the residence shall be completed within five (5) years from the effective date of this permit. Improvements shall be completed prior to the establishment of the bed and breakfast operation.
4. The bed and breakfast operation shall be limited to the use of four (4) bedrooms.
5. The applicants shall provide bottled water for guests of the bed and breakfast operation.
6. The applicants shall locate the Fire Department's connection to the water tank in an area accessible by fire apparatus.
7. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. An extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.

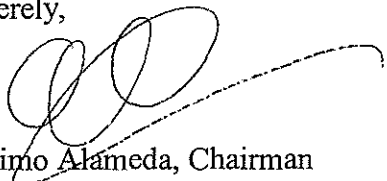
- C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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.

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 Norman Hayashi of the Planning Department at 961-8288, ext 205.

Sincerely,



C. Kimo Alameda, Chairman
Planning Commission

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cc: Ms. Lori Mikkelson
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Health
Rodney Haraga, Director/DOT-Highways, Honolulu