

RECEIVED

99 FEB 1 PM 3 25

THIRD CIRCUIT COURT  
STATE OF HAWAII

99 JAN 29 PM 1:29

BERNICE TORIGOE  
CLERK

_____ David Henkin, Esq.	CORPORATION COUNSEL
✓ _____ Ivan Torigoe, Esq.	COUNTY OF HAWAII
_____ Fred Giannini, Esq.	BY _____
_____ Ben Tsukazaki, Esq.	
_____ Cheryl A. Nakamura, Esq.	

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT


STATE OF HAWAI'I

CITIZENS AGAINST NOISE, a Hawai'i )	CIVIL No. 98-67K
non-profit corporation, )	(Agency Appeal)
)	)
)	)
Appellant, )	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
vs. )	)
)	)
COUNTY OF HAWAI'I BOARD OF APPEALS; )	)
COUNTY OF HAWAI'I PLANNING )	)
COMMISSION; MANUIWA AIRWAYS, INC., )	)
a Hawai'i corporation; and BERNICE )	)
PAUAAHI BISHOP ESTATE, a Hawai'i )	)
nonprofit corporation, )	)
)	)
Appellees, )	Judge Riki May Amano

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came before the Court on August 28, 1998, on appeal from a decision by the Hawai'i County Board of Appeals ("Board"). Appellant Citizens Against Noise ("CAN") was represented by David L. Henkin of Earthjustice Legal Defense Fund; appellee Board was represented by Deputy Corporation Counsel Ivan M. Torigoe; appellee Hawai'i County Planning Commission ("Commission") was represented by Deputy Corporation

I hereby certify that this is a full, true and correct copy of the original on file in this office.

  
Clerk, Third Circuit Court, State of Hawaii

Counsel Frederick Giannini; and appellee ManuIwa Airways, Inc., ("ManuIwa") was represented by R. Ben Tsukazaki.<sup>1</sup> The Court, having heard arguments of counsel, and having considered the briefs submitted, as well as the records and files herein, hereby enters the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

To the extent these Findings of Fact contain Conclusions of Law, they shall be deemed as such.

1. In this appeal, appellant CAN challenges the decision of the Board dated February 25, 1998, regarding the extension of the life of Use Permit No. 21, that allows appellee ManuIwa Airways, Inc., to operate a commercial heliport ("Volcano heliport") on the border of Hawai'i Volcanoes National Park. The Volcano heliport is located within the Volcano Golf and Country Club property in the vicinity of the 18th Fairway at Keauhou, Ka'u, Hawai'i.

2. In 1984, ManuIwa applied for a use permit to build and operate the Volcano heliport. County of Hawai'i Planning Department Background Report ("Background Report") at 1, Record on Appeal ("ROA") Exh. A at 219. The Volcano heliport site is located in the district zoned "Open." Id. At 4, ROA Exh. A at 222. At that time, the County's zoning laws authorized the Commission to issue permits for heliports in all zoning

---

<sup>1</sup> Appellee Bernice Pauahi Bishop Estate was notified of the August 28, 1998 hearing, but did not participate in either the briefing or oral argument.

districts. Hawai'i County Code § 25-28(a)(8) (1984).

3. ManuIwa's application generated substantial public opposition, since the site for the proposed heliport was on the border of Hawai'i Volcanoes National Park, adjacent to the popular Tree Molds exhibit, and less than half a mile from the Volcano Golf and County Club residential subdivision. Background Report at 4, ROA Exh. A at 222. At Commission hearings, members of the public expressed serious concerns about the impacts of noise from heliport activities on neighboring residents, golfers, park visitors, and endangered nene that reside in the area and feed at the golf course. Letter from Roy Kagawa, Commission, to Richard Okita, ManuIwa (Oct. 3, 1984) at 2, ROA Exh. A at 234. Local residents were also worried about possible accidents resulting from use of the heliport. Id.

4. The Commission limited ManuIwa's use permit -- Use Permit No. 21 -- to one year, starting on the date heliport operations commenced. Letter from Roy Kagawa, Commission, to Richard Okita, ManuIwa (Sept. 17, 1984) at 2, ROA Exh. A at 226. This trial period was intended to provide the Commission with additional information regarding the Volcano heliport's impacts, to inform future decisions regarding applications to extend the permit. ManuIwa began operations at the Volcano heliport on August 15, 1985. Background Report at 2, ROA Exh. A at 220.

5. Before ManuIwa's initial use permit expired, ManuIwa asked the Commission to grant a use permit for the Volcano heliport "on a permanent basis." Background Report at 2, ROA

Exh. A at 220. The Commission rejected this request and, on July 24, 1986, approved a limited extension of Use Permit NO. 21 for five more years. Letter from Barbara A. Koi, Commission, to Richard Y. Okita, ManuIwa (July 30, 1986) at 1, ROA Exh. A at 237. The Commission explained that the one-year trial period "was not adequate to fully assess the impact of this use and its operation to the residents and the nene population in the area." Id. Accordingly, the Commission concluded it was "prudent to continue to monitor the operation of the heliport" for an additional five years so that it could be "more fully informed about the need to apply other conditions, if necessary, to protect the public's health and safety and the nene habitat from this operation in this area." Id.

6. ManuIwa's application for renewal of its use permit in 1991 again faced vocal public opposition. Neighboring property owners and representatives from the National Park Service testified regarding the adverse noise and visual impacts associated with ManuIwa's use of the Volcano heliport, as well as ManuIwa's failure to comply with permit conditions. Letter from Mike Luce, Commission, to Richard Okita, ManuIwa (Mar. 11, 1992) at 1-2 ("1992 Permit"), ROA Exh. A at 239-40. Hawai'i Volcanos National Park Superintendent Hugo Huntzinger strongly urged the Commission to require ManuIwa to "move to the Hilo airport" and to "deny further permission" for use of the Volcano heliport. Letter from Superintendent Huntzinger to Duane Kanuha, Commission (Aug. 9, 1990) at 1, 3, ROA Exh. A at 345, 347.

7. On March 11, 1992, the Commission granted "temporary use of the [Volcano heliport] site in order to allow the applicant time to work toward relocation of his operation to an approved heliport." 1992 Permit at 2, ROA Exh. A at 240. Condition No. 4 (life of permit) of this 1992 Permit expressly provided that the permit was "effective for a five year period starting from the effective date of this amendment [March 11, 1992] with no requirement to renew." *Id.* at 3; ROA Exh. A at 241 (redlining omitted). Additionally, the Commission eliminated a permit provision that had allowed ManuIwa to transfer or assign its permit to another operator. *Id.* at 2, ROA Exh. A at 240.

8. ManuIwa did not relocate. At the end of 1996, ManuIwa applied for a use permit with an unlimited duration or, in the alternative, for a ten-year use permit. ManuIwa Request for Amendment to Use Permit (filed Dec. 5, 1996) at Attachment No. 1, ROA Exh. A at 4.

9. At the time ManuIwa filed its extension request, the County was amending its zoning laws. The new Zoning Code, effective December 7, 1996, severely restricts the operation of heliports. Unlike the old Zoning Code, which permitted heliports in any zoning districts with a use permit, the newly-amended Zoning Code generally relegates heliports to Limited Industrial (ML) and General Industrial (MG) zoned districts. Hawai'i County Code §§ 25-5-142(a)(2) (permitted use in ML districts); 25-5-152(a)(2) (permitted use in MG districts); see also Letter from Kevin M. Bowleg, Commission, to Richard Okita, ManuIwa (Apr. 4,

1997) at 2 ("1997 Permit"), ROA Exh. A at 653.<sup>2</sup> The new Zoning Code no longer permits heliports in districts zoned "Open," where the Volcano heliport is located. Hawai'i County Code §§ 25-4-4 (use not listed among permitted uses in zoning district generally prohibited in that district), 25-5-162 (list of uses permitted in "Open" districts).

10. Despite the clear language of the newly amended Zoning Code and extensive public opposition to continued operation of the Volcano heliport, on April 4, 1997, the Commission granted ManuIwa a ten-year extension of Use Permit No. 21. 1997 Permit at 1, ROA Exh. A at 652. In issuing this new permit, the Commission acknowledged that ManuIwa's use of the heliport did not conform with the new Zoning Code. *Id.* at 2, ROA Exh. A at 653. The Commission explained its decision by claiming merely that "an extension of time to continue operations would be in keeping with the original intent for approving this use." *Id.*

11. CAN timely appealed the Commission's decision to the Board on May 2, 1997. In its General Petition for Appeal to the Board, CAN alleged that its members are directly and adversely impacted by ManuIwa's operations at the Volcano heliport. Specifically, CAN alleged that its president J. Barclay Stokes, is a resident and property owner in the Volcano Golf and Country Club subdivision (lots 23 & 24, Golf Links Road) and that his

---

<sup>2</sup> Heliports are also allowed in districts zoned Agricultural (A). Hawai'i County Code § 25-5-72(c)(2). A special permit is required if the building site is located within the state land use agricultural district. *Id.*

residence is located approximately one-half mile from the Volcano heliport used by ManuIwa pursuant to Use Permit No. 21. CAN's General Petition for Appeal (May 5, 1997) at 4, ROA at 6. CAN further alleged that repeated take-offs and landings of ManuIwa helicopters generate noise that interferes with Mr. Stokes' quality of life, destroying his peaceful enjoyment of his land. Id.

12. On February 25, 1998, by a 4-2 vote, the Board denied CAN's appeal of the Commission's grant of an extension to the life of Use permit No. 21 and modified Condition No. 4 (life of permit) to convert ManuIwa's use of the Volcano heliport from a temporary use to a permanent one. Findings of Fact, Conclusions of Law, Decision and Order at 20-22 (Feb. 25, 1998) ("Decision"), ROA at 598-600.

13. CAN timely appealed the Board's decision to this Court on May 25, 1998.

#### CONCLUSIONS OF LAW

To the extent these Conclusions of Law contain Findings of Fact, they shall be deemed as such.

1. This Court has jurisdiction over the claims for relief in this action by virtue of H.R.S. §§ 91-14 (review of contested cases) and § 603-21.8.

2. Venue lies in this judicial circuit by virtue of H.R.S. § 603-36 because the claims for relief arose here.

3. CAN has standing to bring this appeal.

4. ManuIwa filed its request to amend Condition No. 4

(life of permit) of its 1992 Permit after December 1, 1996, and, accordingly, this request is subject to the new Zoning Code's provisions. County of Hawai'i, Ordinance No. 96-160 § 7 (Dec. 7, 1996).

5. Under the new Zoning Code, heliports are no longer permitted in the "Open" district in which the Volcano heliport is located. Hawai'i County Code §§ 25-4-4 (use not listed among permitted uses in zoning district generally prohibited in that district), §§ 25-5-162 (list of uses permitted in "Open" districts). Since the Volcano heliport no longer "conform(s) to the regulations for the zoning district in which it is located," it is, by definition, a nonconforming use. *Id.* at § 25-1-5(b)(79) (defining "non-conforming use").

6. A nonconforming use of land generally may continue only "to the extent it existed at the time of adoption" of the Zoning Code or any amendments thereto. Hawai'i County Code § 25-4-61(a) (emphasis added). The Zoning Code does not authorize any extension or expansion of nonconforming uses of land that is applicable to the facts of this case.

7. Condition No. 4 of the 1992 Permit expressly limited the life of ManuIwa's operation of the Volcano heliport. When the new Zoning Code went into effect on December 7, 1996, ManuIwa held a limited five-year permit that authorized "temporary use of the [Volcano heliport] site in order to allow the applicant time to work toward relocation of his operation to an approved heliport." 1992 Permit at 2, ROA Exh. A at 240 (emphasis added).



8. Under section 25-4-61(a) of the new Zoning Code, ManuIwa's nonconforming use of the heliport could not continue beyond the 1992 Permit expiration date of March 11, 1997.

9. Section 25-4-61 defines the limited circumstances under which nonconforming uses may continue after adoption of the new Zoning Code; it does not authorize the granting of new life to nonconforming uses like ManuIwa's, operating under short-term use permits that have expired. State v. Kaakimaka, 84 Haw. 280, 291, 933 P.2d 617 (1977) ("When the legislature expresses things through a list, the court assumes that what is not listed is excluded.")

10. The Court rejects appellees' claim that section 25-2-61(b) of the new Zoning Code "grandfathers" ManuIwa's use of the Volcano heliport. This provision authorized the expansion of the facility's operations, but only if such expansion were "in full compliance with this chapter and the applicable district regulations." Hawai'i County Code § 25-2-61(b). The temporal expansion of ManuIwa's short-term, nonconforming use of the Volcano heliport was not in compliance with either the Open district regulations or section 25-4-61(a). Accordingly, section 25-2-61(b) does not apply under the facts of this case.

11. The substantial rights of Appellant CAN have been prejudiced because the Board's decision allowing the extension of Use Permit No. 21 is in violation of the Zoning Code and clearly erroneous in view of the record. Therefore, the Board's decision is reversed. H.R.S. 91-14(g).

**ORDER**

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Board's February 25, 1998 Findings of Fact, Conclusions of Law, Decision and Order, denying CAN's appeal of the Commission's grant of an extension to the life of Use Permit No. 21 and modifying Condition 4 (life of permit) of this permit to convert ManuIwa's use of the Volcano heliport from a temporary use to a permanent one is REVERSED;
2. ManuIwa's Use Permit No. 21 is void.
3. ManuIwa shall have thirty (30) days from the entry of this order to remove any structures authorized by Use Permit No. 21 and to cease operations at the Volcano heliport;; and
4. As the prevailing party, appellant CAN shall recover its reasonable costs of suit as provided in Hawai'i Rule of Civil Procedure 54(b), upon submission of an appropriate motion.

DATED: Hilo, Hawai'i, JAN 29 1999

  
\_\_\_\_\_  
JUDGE RIKI MAY AMANO  
Third Circuit Court

C

RICHARD D. WURDEMAN 911  
Corporation Counsel

IVAN M. TORIGOE 4327  
Deputy Corporation Counsel  
County of Hawaii  
101 Aupuni Street, Suite 325  
Hilo, Hawaii 96720

1998 FEB 6 PM 3 17  
COUNTY OF HAWAII

Tel. No. 961-8251

Attorneys for Respondent County of Hawaii

BEFORE THE BOARD OF APPEALS

COUNTY OF HAWAII

CITIZENS AGAINST NOISE, a non-profit corporation,

Appellant,

v.

COUNTY OF HAWAI'I PLANNING COMMISSION,

Respondent,

and

MANUIWA AIRWAYS, INC., a Hawai'i corporation, et al.,

Real Parties in Interest.

Docket No. 97-08

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

misc:a/boacitiz

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

The Board of Appeals of the County of Hawaii (hereinafter, "the Board"), having considered the entire record and file in this appeal and having heard and examined the evidence and argument of the parties presented, makes the following Findings of Fact, Conclusions of Law, Decision and Order.

FINDINGS OF FACT

1. This is an appeal by CITIZENS AGAINST NOISE (hereinafter, "Appellant CAN") from the decision dated April 4, 1997 of the HAWAII COUNTY PLANNING COMMISSION (hereinafter, the "Commission") approving an amendment to Condition No. 4 (life of permit) of Use Permit No. 21, which allowed the establishment of the Volcano Heliport, extending the life of the Permit for an additional ten years and amending other conditions. The property is located within the Volcano Golf and Country Club property in the vicinity of the 18<sup>th</sup> fairway, Keauhou, Ka'u, Hawaii, TMK: 9-9-06:07.

2. In 1984, Real Party in Interest Manulwa Airways, Inc. (hereinafter, "Manulwa") applied for a use permit to build and operate a heliport near the 18<sup>th</sup> hole of the Volcano Golf and Country Club. County of Hawaii Planning Department Background Report ("Background Report"), Record on Appeal ("ROA") at 219. The Volcano heliport site is county zoned "Open." Id., ROA at 222. At that time, the Zoning Ordinances expressly authorized the Commission to issue use permits for heliports in all

zoning districts. Hawai'i County Code §25-28(a)(8) (1984); Background Report at 4, ROA at 222.

3. The Volcano Golf and Club Subdivision consisting of Single Family Residential (RS-15) zoned parcels is located approximately 2,000 feet to the North of the heliport. The Volcano Golf Course lots zoned Agricultural (A-1a) are located approximately 1,100 feet to the southeast, the Kilauea Military Camp is located approximately 500 feet to the southwest (across Highway 11) and the Hawaii Volcanoes National Park is approximately 50 feet to the south and west of the heliport. The heliport is approximately 1,200 feet away from the golf clubhouse and 2,300 feet from the nearest residence. ROA, p. 222.

4. Public testimony in support of and against the [special] use permit was taken at Commission hearings on August 2 and September 12, 1984. Use Permit No. 21 was approved by the Commission to allow the establishment of a heliport for operation of two helicopters and related improvements subject to conditions, for a period of one year starting with the date of commencement of operations. Operations began August 15, 1985. ROA, pp. 219, 220. The permit could be extended by the Commission "at its discretion." ROA, p. 226.

5. Manulwa applied for permanent establishment of Use Permit No. 21, but on July 24, 1986 the Commission approved a five-year extension of the Use Permit until

August 15, 1991 with an added condition requiring submittal of written reports on the Nene population. The Commission found:

We have determined that the original findings and recommendation on the establishment and continued use of the heliport use are still valid. The community benefits that this operation has provided for the County should also be recognized and commended. In addition, there were no complaints filed with the Planning Department during the first year of operation. Nevertheless, it is felt that the one-year time period was not adequate to fully assess the impact of this use and its operation to the residents and the nene population in the area. As such, it would be prudent to continue to monitor the operation of the heliport for at least another five-year period. By continuing to monitor the operation, we can be more fully informed about the need to apply other conditions, if necessary, to protect the public's health and safety and the nene habitat from this operation in this area. ROA, pp. 220, 227-8.

6. On May 12, 1987, the Commission held a public hearing to determine whether ManuIwa had violated conditions of approval regarding an alleged unauthorized landing and "before-hours" activities. The unauthorized landing was explained as an emergency landing and before-hours activities involved ground maintenance activities. A motion to hold contested case hearings on the complaints failed to pass. The Commission received and filed the complaints with no further action. ROA, p. 220.

7. On June 25, 1991, ManuIwa requested a 90-day extension to allow continued use of the heliport until additional information could be provided and a hearing held for an additional 5-year extension. On August 15, 1991, the Commission approved the 90-day extension.

8. On February 27, 1992, the Commission approved another 5-year extension to Condition F (life of permit), with additional conditions to limit the hours of operation, number of landings and to avoid noise sensitive areas within the National Park pending further regulations affecting park overflights. ROA, p. 220. The Commission found:

The granting of a time extension is consistent with the original reasons for the granting of the Use Permit. The continued use will not cause substantial adverse impact to the surrounding properties. The applicant's acoustic study indicated that the heliport is sufficiently separated from the surrounding residential areas to avoid excessive noise impacts. The study states that the "ambient less 5Ldn" complaint criteria can be met at an average of 8 tour flights per day as long as the indicated ingress and egress routes are followed and as long as static operations (ground idle, flight idle, and hover) are not excessive. No evidence has been submitted to indicate that the heliport use has negatively impacted the nene population.

The superintendent of the National Park and some neighboring property owners have stated that the use of the heliport has resulted in negative noise and visual impacts . . .

It is, therefore, recommended that additional conditions be included to mitigate impacts to surrounding properties and the National Park . . .

This recommendation is to allow temporary use of the site in order to allow the applicant time to work toward relocation of his operation to an approved heliport. It should be noted that the applicant has been diligent in complying with the stated conditions of approval of the permit and has attempted to limit negative impacts of his operation. The applicant's participation in emergency helicopter support services to the community is also recognized. For these reasons, it is recommended that the heliport be restricted to use by only ManuIwa Airways, Inc. except in the case of any emergency.

The Commission also removed the provision for extension at its discretion, instead stating that there was “no requirement to renew” ROA, pp. 239-240.

9. On December 5, 1996, ManuIwa filed a Request for Deletion of Condition No. 4 (life of the permit) or Extension of Time for 10 Years. (“Extension Request”) ROA, p. 4. The Extension Request noted that “By March 11, 1997, the Permit will require an extension of the Permit’s effective period for heliport to continue its operations.” ROA, p.2. ManuIwa presented written testimony in support of the Extension Request ROA, pp. 11-30.

10. Because of scheduling problems, the Planning Department asked ManuIwa to waive its right under Planning Commission Rule 7 to a public hearing within 60 days of filing the Extension Request. ROA, p.49. ManuIwa agreed, asking for an extension of the life of the permit to accommodate the delay in the hearing process. ROA, p. 47, 54

11. By letter of January 31, 1997, ManuIwa submitted supplemental materials relevant to the Extension Request. These included testimony showing no impact on the nene population, Special Federal Aviation Regulation (SFAR) No. 71, a letter from Hawaii Volcanoes National Park Superintendent James F. Martin asking that the Use Permit have a life limit for “periodic review to ensure it has not become an unacceptable impact on the National Park,” ManuIwa’s licenses and permits, and letters in support of and against the Extension Request. ROA, pp. 89-123.



12. Appellant CAN submitted objections to the Extension Request, in particular to the requested elimination of the limit on life of the permit. ROA, pp. 79-87. CAN also submitted information on pending federal bills on National Park overflights, urging that the permit not be extended pending action on those bills. ROA, pp.132-172.

13. The Volcano Community Association wrote to the Planning Department by letter dated February 10, 1997, stating that its Board was equally divided about the extension of the permit, but unanimous that any extension should be limited in time. ROA, p. 175.

14. By letter of February 14, 1997, ManuIwa submitted verification of notice to surrounding landowners. The parties have not disputed the sufficiency of said notice. ROA, pp. 176-194.

15. The Planning Commission and Department received several letters from surrounding residents opposing the Extension Request, ROA, pp. 195-200, and in support of the Extension Request. ROA, pp. 203-208, 587. The U.S. Geological Survey wrote in support as well. ROA, p. 599.

16. Appellant CAN submitted a Petition for Standing in Contested Case Hearing on the Extension Request. ROA, pp.209-213.

17. There was no objection or comment on the Extension Request from the Hawaii County Fire Department, Department of Public Works, Police Department, Department of Water Supply, or Real Property Tax Office. The State Department of

Transportation, Highways Division deferred to the Planning Department as to whether this was best handled by Zoning change or Use Permit. ROA, p. 223. The State Department of Health “found no environmental health concerns with regulatory implications in the submittals.” ROA, p. 578.

18. The Commission held a public hearing on the Extension Request on February 27, 1997. Appellant CAN submitted written testimony opposing the Request. ROA, pp. 582-585. Counsel for the Commission advised that the Board of Appeals would be the appropriate forum for a contested case on the matter. The Commission voted unanimously to extend the life of the Use Permit to March 20, 1997, and to continue the hearing to that date. ROA, 596, 590-591.

19. Virginia Goldstein, Planning Director of the County of Hawai’i, recommended that the request to extend the life of the permit be approved for five years rather than the ten years requested. She noted, “. . . it is not recommended that a permanent heliport facility be established. Instead, extending the life of the permit for five years, would allow ManuIwa Airways, Inc. to continue it’s(sic) operations and allow the Planning Commission opportunity to further review and reassess the appropriateness of its location. Should it be determined that this facility poses substantial adverse impacts to the community’s character or surrounding properties, the use permit could be revoked.” ROA, pp. 615-620.

20. At the Commission continued hearing on March 20, 1997, Appellant CAN submitted further written testimony. ROA, 630-645. The Commission voted to approve a 10-year time extension to the life of the permit, with other conditions recommended by the planning director, deleting condition No. 2, and adding a condition that Manulwa submit a letter to the Planning Department that the heliport will be available for emergency and governmental uses. ROA, pp.647-663.

21. The Commission issued its written decision on the Extension Request on April 9, 1997. ROA, 664. On May 2, 1997, Appellant CAN filed its appeal to the Board of Appeals from the Commission's action. Manulwa moved to intervene and was granted intervention as a party.

22. Appellant CAN alleged that the Commission did not have legal authority to grant the extension of the time limit on the Use Permit. CAN argued that under the amended Zoning Code effective December 7, [1997] 1996, heliports were no longer permitted uses in the Open district, but were nonconforming uses, which could not be expanded or extended, and filed a Motion for Summary Judgment to that effect. CAN reserved the right to contest the merits of the decision to grant the extension of the life of the permit if the Board did not dispose of the appeal on the basis of lack of authority.

23. The Board held duly noticed hearings on the appeal on July 11, 1997, July 18, 1997, September 19, 1997, October 30, 1997, November 14, 1997 and December 18, 1997.

24. The parties stipulated to certain facts, as set forth in the "Stipulated Facts" dated September 12, 1997, a true copy of which is attached as "Exhibit A."

25. The parties also stipulated for the Board to hear legal arguments prior to a full contested case hearing, to allow the Board to rule on the legal issues which the parties argued might be dispositive of the case, similarly to the procedure on a motion for summary judgment. A true copy of The Stipulation Of Scope and Procedure of Hearing is attached as "Exhibit B."

26. Manulwa and the Commission argued, contrary to CAN, that no further extensions were ever required once the Use Permit had been issued and the Zoning Code had been amended, since the heliport was established as a "legal use" under code §25-2-61(b). Hence, Manulwa and the Commission argued that the heliport was now a permanently established legal use under the "grandfathering" provisions of the code. The Commission further argued that the heliport could be considered as within the definition of a permitted use in the Open district, such as "major outdoor recreational facility."

27. CAN moved to bar the testimony of Planning Director Virginia Goldstein and Sandra Schutte, who had been identified as witnesses by other parties. CAN argued that their testimony would improperly cover questions of law regarding interpretation of the Zoning Code rather than fact, and that Ms. Goldstein would not be available at the next hearing, causing delay. At the September 19, 1997 hearing, the Chairperson denied the

motion, reserving CAN's right to object to specific questions. Ms. Goldstein testified on October 30, 1997.

28. In the course of the hearings, ManuIwa moved to continue the hearings due to a recent Third Circuit Court ruling that the County Council acted in violation of the State of Hawai'i Sunshine Law, HRS Chapter 91, when the Council enacted the new Zoning Code in December 1997. Because this might result in the new Zoning Code being voided, and CAN's arguments on lack of authority were based on the new Zoning Code, ManuIwa urged the Board to continue the hearings pending the outcome of the Circuit Court case. At the October 30, 1997 hearing, the Board heard the arguments on the Motion to Continue, and the Chairperson denied the motion, noting the parties' investment in the case, and the uncertainty of the wait for the Circuit Court decision.

29. On November 7, 1997, ManuIwa again moved to continue the hearings due to its filing of a Petition for Declaratory Ruling with the Planning Director, on whether §25-2-61(b) of the Zoning Code applies to ManuIwa so as to make the prior Request for Extension unnecessary, mooting the Appeal. On November 14, 1997, the Chairperson denied the Motion, noting that the doctrine of primary jurisdiction did not apply.

30. The Board heard legal arguments at the hearing on November 14, 1997, and the parties stipulated to final written arguments being submitted for hearing on December 18, 1997.

31. At the hearing on December 18, 1997, Appellant CAN withdrew its appeal of the factual merits of the decision to grant the extension of the Use Permit, reserving only its legal argument regarding the authority of the Commission for the Board to consider.

32. In the 1986 extension, the Commission noted, “the original findings and recommendation on the establishment and continued use of the heliport use are still valid.” ROA, p. 237. The Commission also provided, “[t]he Planning Commission shall terminate the permit if it finds that the heliport use is a nuisance to either the nene population or to surrounding property owners.” ROA, p. 238. In the 1992 and 1997 Extensions, the Commission noted, “[t]he granting of a time extension is consistent with the original reasons for the granting of the Use Permit.” ROA, p. 239, 653. The 1992 extension also provided, “[i]f the heliport is found to be negatively impacting the Nene population, the Planning Director shall initiate revocation of the Use Permit.” ROA, p. 242. This clause was amended in the 1997 extension to trigger revocation if the heliport negatively impacted “surrounding properties” or the Nene population. ROA, p. 651.

33. Ordinance No. 85-40, which created the section which was to become §25-2-61(b), stated its purpose as follows: “The Council finds that the present language of the Code is silent relative to uses approved prior to the adoption of Ordinance No. 84-62 which became effective on September 25, 1984. This bill intends to clarify the Code by stating that a use previously approved as a conditionally permitted use or which was

granted a use permit need not obtain another use permit for any expansion of that approved use.” ManuIwa Exhibit “A.”

34. Admitted into evidence before the Board were Appellant CAN’s Exhibits 1 through 7, ManuIwa’s Exhibits A through C, and the Commission’s Exhibits 1 through 3. The Board considered the Exhibits and the Record on Appeal, in addition to the testimony and argument presented at the hearings.

35. After much deliberation, the Board voted 4-2 to modify the Use Permit, to remove Condition 4, life of the permit, and establish the heliport use as a permanent legal use subject to the other conditions of the Use Permit, subject to review by the Commission every 5 years for compliance with the stated conditions. [This in effect] The Board thus denied the appeal.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter and the parties to the Appeal.
2. Under the new Zoning Code Ordinance No. 96-160, enacted effective December 7, 1996, applications for permits or approvals under the Zoning Code accepted for processing by December 1, 1996 may be processed according to the prior Zoning Code, subject to time limits. The instant Extension Request was filed December 5, 1996, and must be processed pursuant to the new Zoning Code. The parties orally stipulated to the same on the record.

3. Under the prior Zoning Code, heliports could be established under a Use Permit in the Open district.

4. Under the new Zoning Code, heliports are specifically identified as permissible only in certain districts, such as ML (Limited Industrial) or MG (General Industrial) districts, or in A (Agricultural) districts, provided a special permit is obtained if within the state land use agricultural district. They are not specifically permitted in the Open district. While a heliport might arguably be a “major outdoor amusement or recreation facility,” which is allowed in the Open district with a Use Permit, the specific identification of heliports as such, shows that heliports were intended to be treated distinctly from other amusement or recreational facilities. Hence, the heliport will not be construed as such an outdoor amusement or recreation facility. Nor will the heliport be construed to be any other expressly permitted use in the Open district under the new Zoning Code. Under the new code, a heliport is a “nonconforming use” as defined under §25-1-5(b)(79).

5. Under §25-1-5(b)(79), a “non-conforming use” means a use lawfully in existence on September 21, 1966 or on the date of any amendment under this chapter, but which does not conform to the regulations for the zoning district in which it is located. Under §25-4-61(a), “any nonconforming use may continue to the extent it existed at the time of adoption of this chapter or any amendments thereto,” and may be enlarged within



the building it occupies. The intent of §25-4-61(a) is to generally allow continuation of existing uses which may become non-conforming due to Zoning Code amendments.

6. Under §25-2-61(b), “Any use which received an approval as a conditionally permitted use prior to September 25, 1984, or which received prior approval through the use permit process, is considered a legal use of the affected parcel and may be expanded or enlarged without obtaining another use permit, provided such expansion, enlargement or addition is in full compliance with this chapter and the applicable district regulations.” The intent of this section is to specifically provide for continuation of uses conditionally permitted, or established under use permits, when they become impermissible due to Zoning Code amendments.

7. Neither §25-4-61(a) nor §25-2-61(b) expressly address the instant facts, where a use has been established pursuant to a Use Permit with a condition *limiting the lifetime* of the permit. These facts in effect represent the granting of a Temporary Use Permit subject to conditions. Nothing in the Zoning Code expressly addresses or authorizes the granting of Temporary Use Permits.

8. Under §25-2-64(b), “in approving any use permit application, the commission may issue the approval subject to conditions, including hours of daily operation and terms of the use permit. The conditions imposed by the commission shall bear a reasonable relationship to the use permit granted.”

9. Some courts have construed such general authority to set conditions, as broad enough to include, where appropriate, time limitations. See, *Nance v. Council of City of Memphis*, 672 S.W. 208 (Tenn. App. 1983). Other authorities have found that absent express authority to set lifetime limitations, the power to do so is doubtful. 7 Rohan, *Zoning and Land Use Controls*, §44.04[1]; Anderson's *American Law of Zoning*, §21.33; *Scott v. Zoning Board of Appeals*, 88 A.D.2d 767, 451 N.Y.S.2d 499 (1982); *Room & Board Homes v. Gribbs*, 67 Mich. App. 381, 241 N.W.2d 216 (1976).

10. The question of whether a zoning authority has power to issue permits with lifetime limits depends on the language of the applicable ordinances. Chapter 25 nowhere authorizes or addresses the granting of temporary use permits, with limited lifetimes. In fact, neither §25-2-61(b), (the Use Permit grandfathering clause), nor §25-4-61(a), (the nonconforming use grandfathering clause) appear to have contemplated the possibility of a Temporary use permit, with a lifetime limit. Neither these sections, nor any other part of Chapter 25 cited by the parties, specifically provides for grandfathering or other disposition of a Temporary Use Permit with a lifetime limit, when the Zoning Code is amended and the use becomes otherwise nonconforming.

11. Appellant CAN notes that §25-2-61(b) indicates that any “expansion, enlargement or addition” to a legal use grandfathered under a Use Permit must be “in full compliance with this chapter and the applicable district regulations. CAN argues that an extension of the lifetime of the Use Permit would be such an “expansion, enlargement or

addition” to the use. Since heliports are no longer permitted in the Open district, CAN argues, any extension of the lifetime of the permit would now be in violation of, not compliance with Chapter 25. [Hence, CAN argues, the extension of the life of the Use Permit was in violation of §25-2-61(b) and the Commission had no power to grant such an extension.]

12. However, the expressed intent of §25-2-61(b) was not to terminate uses established under Use Permits, but to grandfather them, to *allow them to continue* when changes in the zoning code result in their no longer being normally permitted. §25-2-61(b) simply does not address the instant facts, where a use has been established under a Use Permit, but was made subject to a limited life of the permit. Moreover, the requirement of compliance with district regulations addresses expansion, enlargement or addition “without obtaining another use permit;” it does not address the Commission’s power to set or modify conditions. [Therefore, the Board will not adopt CAN’s interpretation of §25-2-61(b).]

13. CAN further argues that the temporal expansion of ManuIwa's use of the Volcano heliport violated §25-4-61(a), which prohibits the expansion of this nonconfirming use beyond “the extent it existed” on December 7, 1996, when the new Zoning Code took effect. CAN contends that the “extent” of ManuIwa's use of the Volcano heliport includes Condition No. 4 of the 1992 Permit, which required ManuIwa to cease its operations no later than March 11, 1997.

14. However, §25-4-61(a) does not define “extent” of the use. Neither does it address modification of conditions. It does address spatial extent, but not temporal extent. To imply preclusion of modification of time conditions would be inconsistent with the Commission's general power to set and amend conditions. Moreover, the Board now concludes that the imposition of a prospective expiration date was invalid. Thus, the “extent” limitations become irrelevant.

15. [13.] ManuIwa and the Commission note that §25-2-61(b) says “[a]ny use which . . . received prior approval through the use permit process, is considered a legal use. . .” ManuIwa and the Commission argue that the heliport use is therefore permanently established as a legal use. They argue that there was no need get any further extensions of the life of the permit, and that the Appeal is moot.

16. [14.] Although the general intent of §25-2-61(b) is to establish grandfathered uses under prior use permits, there is no indication in the language of the ordinance or the legislative history to indicate that the ordinance was intended to *nullify conditions* which the Commission may have applied to the establishment of the use. To so hold would be contrary to the Commission’s authority to establish conditions generally. The record amply reflects that the Commission has always expressed concern about the possibility that the heliport use might at some point prove to be injurious to the surrounding wildlife or residents, and wanted to retain some review authority. Moreover, ManuIwa’s interpretation is contrary to twelve years and three prior extensions’ worth of

administrative interpretation to the contrary, which show that all parties and the Commission regarded Manulwa's permit as time-limited. Therefore, the Board will not adopt Manulwa's and the Commission's interpretation of §25-2-61(b).

17. [15.] The Board's rejection of both camps' positions, after much rumination, hand-wringing and six(6) hearing dates reflects that Chapter 25 simply does not appear to have contemplated the granting of use permits with lifetime limits. The parties have had difficulty arguing their positions, and the Board had trouble deciding on those positions, because Chapter 25 does not authorize Temporary Use Permits, nor does it account for them in its grandfathering provisions. The parties and the Board have spent time and effort reaching for something that was not there.

18. [16.] The Commission may grant a use permit under conditions which require periodic review for compliance with conditions. See, *Fiol v. Howard County Board of Appeals*, 67 Md.App. 595, 508 A.2d 1005 (1986). However, a lifetime limitation is not an authorized or recognized condition under Chapter 25; a lifetime limit is not a proper condition, but a truncation of the use altogether, a granting of a Temporary Use Permit. The granting of a Use Permit "is tantamount to a legislative finding that the use is in harmony with the general zoning plan and that it will not adversely affect the neighborhood." Repeated extensions indicate that the use meets the necessary criteria; under such circumstances, denial of the permit would be arbitrary and capricious. *Scott v. Zoning Board of Appeals*, 88 A.D.2d 767, 451 N.Y.S.2d 499(1982).

19. [17.] Here, the Commission has repeatedly found that the heliport use met the criteria for issuance and continuation of the Use Permit, under specific conditions. The Commission could impose a condition for periodic review for compliance with those conditions. However, it was not authorized to issue a Temporary Use Permit that would automatically terminate. Such an automatic termination would be contrary to its prior repeated findings of conditional acceptability, and would be arbitrary and capricious. It would prejudice the future compliance or noncompliance of the use with respect to the criteria for permit issuance. Land users and the public should be able to rely on the Commission's findings of conditional acceptability, and the Commission should be fully aware of the long-term impact of its decisions.

20. [18.] Twice, in 1986 and again in 1992, the Commission granted Manulwa five (5) - year permit extensions. In 1997, the Commission granted a ten (10) - year extension. In all three extensions, the Commission noted that the reasons for granting the original use permit were still valid. In all three permit extensions, the Commission provided for termination should the use become a nuisance or be in breach of conditions. In granting the latest 10-year extension, the Commission evidently found that less frequent monitoring was sufficient, and that the use had established a substantially favorable track record of compliance with conditions.

21. Under §25-2-23 of the Zoning Code, the Board may affirm the decision of the Director or the Commission, or it may reverse or modify the decision or remand the

decision with appropriate instructions if based upon the preponderance of evidence the

Board finds that:

- (1) The director or commission, as appropriate, erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

22. [19.] Based on the foregoing, the Board concludes, by a preponderance of the evidence, by a 4 to 2 vote, that the Commission was in error, and acted arbitrarily and capriciously by issuing a further Temporary Extension to the Temporary Use Permit which had been previously issued. The history of this case shows that the Commission has repeatedly found that the heliport use met the criteria for conditional establishment of the heliport use. Therefore, the Use Permit will be modified to establish the use as permanent. In light of this permanence, the permit will be conditioned upon a new Condition 4, requiring that ManuIwa appear before the Commission every five (5) years for review of compliance with and review of conditions. Of course, the Commission retains the discretion to modify the applicable conditions upon a showing of cause, including deletion of the review condition. The Commission also retains jurisdiction to revoke the Use Permit upon a showing of sufficient cause.

DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, this Appeal is hereby denied, and the Planning Commission's decision to grant a ten (10) year extension of time modifying Condition 4 (life of the permit) of Use Permit No. 21 is modified as follows:

1. Condition 4 (life of the permit) is deleted. A new Condition 4 replaces it, to provide: "The petitioner shall appear before the Commission within five years of the date of this approval for review of compliance with all conditions of this Use Permit. Violation of any condition of this Use Permit [shall] may be cause for revocation. Notice of the review hearing shall be given to all persons who would be entitled to notice of an application for Use Permit under the Zoning code in effect at the time. Petitioner shall appear before the Commission for periodic review of compliance with conditions every five years thereafter."

2. References to the life of the permit being 10 years shall be deleted.

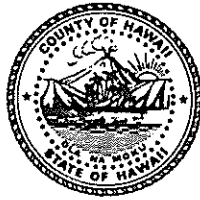
Dated: \_\_\_\_\_, Hawaii, \_\_\_\_\_.

BOARD OF APPEALS, COUNTY OF HAWAII

By \_\_\_\_\_  
Deanna Hammersley



Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

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

CERTIFIED MAIL  
Z 095 323 842

APR 04 1997

Mr. Richard Okita  
ManuIwa Airways, Inc.  
1655 Makaloa Street, Suite 2701  
Honolulu, HI 96814

Dear Mr. Okita:

Use Permit (USE 21)

Applicant: ManuIwa Airways, Inc.

Request: Deletion of Condition No. 4 (Life of Permit Or Extension  
of Time for Ten Years)

Tax Map Key: 9-9-6:Portion of 7

The Planning Commission at its duly held public hearing on March 20, 1997, voted to approve the above-referenced request for an amendment to Condition No. 4 (life of permit) of Use Permit No. 21, which allowed the establishment of the Volcano heliport. Specifically, the amendment is the deletion of Condition No. 4 or an extension of time for 10 years. The site is located within the Volcano Golf and Country Club property in the vicinity of the 18th Fairway at Keauhou, Ka'u, Hawaii.

Approval of this request is based on the following:

In review, the applicant was originally granted a Use Permit in 1984 to operate the heliport for one year based on the findings that the heliport facility could be properly integrated with the existing golf course, residential community and the Hawaii Volcanoes National Park. The operations commenced on August 15, 1985, for one year until August 15, 1986, and the applicant requested a renewal of the permit to allow a permanent establishment of the request. The Planning Commission extended the permit for five years to August 15, 1991, with a new condition requiring submittal of a written report on the impact of the operations on Nene activity. The Commission felt that one year was not sufficient time to fully assess impacts and needed more time to monitor the use in order to protect the public welfare and Nene activity. An interim 90-day extension of time to continue operations beyond August 15, 1991 was approved by the Planning Commission. Subsequently on February 27, 1992, the Planning Commission approved another five-year time extension until March 12, 1997, along with additional conditions to limit hours of operation, number of landings and avoidance of noise sensitive areas within the Hawaii Volcanoes National Park. As the permit would have expired on

03239

APR 07 1997

1652

March 12, 1997, the Planning Commission, at its last Hilo meeting held on February 7, 1997, extended the permit until March 20, 1997, the date of the Kona scheduled public hearing. The Volcano heliport has been in operation at its present location for about 11 years.

In considering a Use Permit for any proposed use, the Hawaii County Zoning Code, Section 25-2-65, relating to Criteria for granting a use permit, requires that such action conform to the following guidelines:

- (1) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of this chapter, and the General Plan;
- (2) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character, to surrounding properties; and
- (3) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

The granting of this time extension is consistent with the original reasons for the granting of the Use Permit. The request was originally approved under the premise that the heliport operation could be established and properly integrated within the community. Extensions were granted on the basis that the continued use of the heliport operation did not cause substantial adverse impact to surrounding properties. Previously provided testimony and submittal of an acoustic study by the applicant at the public hearing for the last five-year extension, indicated that the heliport was sufficiently separated from the surrounding residential areas to avoid excessive noise impacts. In addition, the heliport operation is subject to conditions of the existing Use Permit as well as to the Rules and Regulations which were created to minimize impacts to surrounding areas. A "Prohibited Residential Zone" and "Noise Abatement Buffer Zone" over the existing residential areas in the vicinity as well as sensitive areas within the Hawaii Volcanoes National Park have been defined as avoidance areas within the existing permit. The heliport operation must also follow strict compliance with Federal Aviation Regulations. In regards to impacts on the Nene population, annual reports continue to be provided by the applicant indicating no evidence that the Nene population has been negatively impacted by the operations.

The continuation of the heliport operation shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code, and the County General Plan. Although the present County Zoning Code allows heliports to be established in the Limited or General Industrial zoned districts, the subject operation was originally approved in 1984 when helicopter pads or heliports could be established in all districts through a use permit. As the use was originally approved by meeting the criteria for Use Permits, it is considered non-conforming and an extension of time to continue operations would be in keeping with the original intent for approving this use.

The continuation of the heliport operation shall not be materially detrimental to the public welfare and cause substantial, adverse impact to the community's character or

to surrounding properties. The helipad is located on the Volcano Golf Course property within the vicinity of the 18th fairway. The heliport operations are situated on a small strip along the southern boundary of the parcel. This portion of the parcel is vacant with the exception of the helipad and a small reservations office. The entire parcel is approximately 57 acres in size and used as a golf course. Hours of operation are limited to between 8:00 a.m. and 5:30 p.m. and a maximum of eight (8) landings per day, with the exception of emergency helicopter support. Although, the helipad is within 2,000 feet of the nearest residence in Volcano Golf Course subdivision and within 1,100 feet of the Volcano Golf Course lots, the applicant is bound by restricted flight paths and prohibited from flying over these lots as they fall within the "Residential Zone" and "Noise Abatement Buffer Zone." Since the granting of the last extension of time in 1992, neither the applicant nor the Planning Director has received any specific noise complaints regarding the heliport's operations. Although a complaint was filed in regards to deviation from flight patterns and permit requirements, the applicant is on record in confirming that the particular incident was related to emergency support service. All other deviations from permit requirements have been confirmed in writing by the applicant to be related to emergency support and monitoring services and are a part of the file. In regards to the present request, community comments both in support and opposition to the request were received from residents and businesses within the Golf and Country Club subdivision, the nearby Volcano Village and the National Park. Citizens Against Noise expressed their firm opposition to the request as part of their position against noise, the helicopter tour industry and its impact on the Hawaii Volcanoes National Park. The board members of the Volcano Community Association were equally divided on the permit and recommended a limited life on the permit. The Hawaii Volcanoes National Park opposed the presence of the heliport for scheduled tour operations and scenic flights and supported the heliport's presence for County, State and Federal missions. They expressed concerns on adverse impacts to the Park and recommended that a limited life be placed on the permit for periodic reviews.

The applicant has continued to comply with conditions of approval and has reported all emergency landings or services outside of the permit requirements. As explained by the applicant, more than two-thirds of the flights flown by ManuIwa Airways, Inc. are for government, industrial and institutional (non tour) organizations. Emergency support services and monitoring missions are also provided for the Hawaii Volcanoes National Park. In regards to impacts of the ManuIwa helicopter, once it is in the air, particularly within the national park, it is believed that appropriate federal legislation should address impacts the helicopter tour industry has as a whole on the national park system. However, the surrounding community expressed some opposition to the location of the facility. In addition, the Volcano Golf and Country Club subdivision has plans for expansion. Subsequent to the Use Permit's approval, additional lands were rezoned by the County Council in 1994 to RS-15 for a 40-lot subdivision, as a proposed Increment V within the Volcano Golf and Country Club subdivision. As such, it is not recommended that a permanent heliport facility be established. Instead, extending the life of the permit for ten years would allow ManuIwa Airways, Inc. to continue its operations and allow the Planning Commission opportunity to further review and reassess the appropriateness of its location. Should it be determined that this facility poses substantial adverse impacts to the community's character or surrounding properties, the use permit could be revoked.

The continuation of the heliport operation will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure. The heliport facility does not require any services or related infrastructure to support their operations. In case of an emergency, fire protection services are available from the Kilauea Military Camp. The presence of the heliport operation in this location has been, in fact, a benefit to the community and the Volcanoes National Park by providing emergency support services and monitoring missions.

Based on the above, the applicant's request to extend the life of the permit is approved for ten years.

Condition No. 4 is amended accordingly, with deletion of "with no requirement to renew." A review of the background report and minutes in the file make no references to support or clarify this particular statement. All other conditions remain in effect. For ease in understanding the conditions of the permit, all conditions related Rules and Regulations and maps are included and attached.

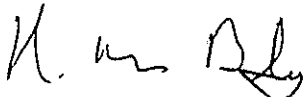
1. The petitioner shall be responsible for complying with all conditions of approval. This permit shall be valid only for the current applicant, ManuIwa Airways, Inc.
2. The rules and regulations submitted for the Volcano Heliport, dated July 31, 1984 are hereby incorporated by reference (see attached) and shall be binding on the operator of the heliport as a condition of approval. These rules and regulations may be amended only after review and concurrence of the Federal Aviation Administration and the County Planning Commission with the exception that hours of operation shall be further limited to between 8:00 a.m. and 5:30 p.m.
3. The helipad shall consist of a maximum area of 95' x 95' that is leveled and grassed. Within this area there will be a maximum of two concrete pads approximately 20' x 20' in size. This 95' x 95' area shall be surrounded by a bordering hedge. The helipad shall be situated within the southwest tip of the golf course property and situated a minimum of 100' from the western boundary of the National Park. The exact siting of the helipad area, however, shall take into consideration the safety of the golfers, visitors to the tree mold viewing area and the clients of the petitioner.
4. This permit shall be effective for a ten year period starting from the effective date of this amendment.
5. Flight operations shall be limited to a maximum of eight landings per day, with the exception of landings involving emergency helicopter support.
6. Flights using the heliport shall observe sound abatement procedures as recommended by the Hawaii Helicopter Operators Association Helicopter Sound Abatement Procedures Manual. Flights using the heliport shall maintain a minimum 500 foot above ground level (AGL) flight path over the Volcanoes National Park and shall avoid areas shown on the attached map labelled as Exhibit "B" in addition to existing avoidance areas shown in Exhibit "A".

7. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of this amendment. The report shall include but not be limited to complaints received, disposition of complaints, and a log of flights deviating from the "Rules and Regulations for the Volcano Heliport". The annual report shall include an impact analysis on the Nene population which shall be reviewed by the Department of the Interior and the Department of Land and Natural Resources. If the heliport is found to be negatively impacting surrounding properties or the Nene population, the Planning Director shall initiate revocation of the Use Permit.
8. The petitioner shall be responsible for operating the heliport facility in the manner prescribed by the rules and regulations incorporated in condition "2" above. Alleged violations of these rules may cause the Planning Director to schedule a public hearing before the Planning Commission to determine whether a violation has in fact occurred.
9. All other applicable laws, rules, regulations and requirements shall be complied with.
10. Should the Planning Director determine that any of the above conditions have not been met, or substantially complied with in a timely manner, the Director shall initiate procedures to revoke the permit.
11. The applicant shall submit a letter to the Planning Department that the heliport will be used for emergency and governmental uses, in addition to commercial tours.

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

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

Sincerely,



Kevin M. Balog, Chairman  
Planning Commission

AK:syw

LManui02.PC

Enclosure

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Kazu Hayashida, Director/DOT-Highways, Honolulu  
Mr. David Okita  
Sandra Schutte, Esq.

RULES AND REGULATIONS

VOLCANO HELIPORT

VOLCANO, HAWAII

July 31, 1984

1. PURPOSE: The helicopter is a valued means of transportation but its utilization must include responsible use of air space and needs of the community. The Rules and Regulations contained herein shall be strictly observed at the Volcano Heliport to ensure responsible use of the helicopter and the Heliport.
2. HELIPORT TERMINAL AREA: The land area and air space within three (3) miles distance of the Heliport shall be designated the Heliport Terminal Area (HTA). The HTA is shown on the map, which is a part of these Rules and Regulations and titled "Heliport Terminal Area, Volcano Heliport". The HTA is a controlled area in which the Heliport and the helicopter must be operated strictly according to the Rules and Regulations.
3. PROHIBITED RESIDENTIAL ZONE: Part of the HTA is zoned Prohibited Residential Zone and is shown on the map titled "Heliport Terminal Area, Volcano Heliport". The zone contains lands that are used as residential or zoned for future use as residential. The helicopters using the Volcano Heliport shall not for any reason enter the Prohibited Residential Zone.
4. NOISE ABATEMENT BUFFER ZONE: Part of the HTA is zoned Noise Abatement Zone which is land and air space 1,000 feet wide along the boundary of the Prohibited Residential Zone. The helicopters using the Volcano Heliport shall not, for any reason, enter the Noise Abatement Buffer Zone.
5. LIMITATION OF AUTHORITY: These Rules and Regulations are to be taken as complementary to those of the Federal Aviation Administration, National Park Service, the State of Hawaii, the County of Hawaii, and all other applicable laws and ordinances. The intention of these Rules and Regulations is to provide local requirements and conditions for use of a particular airspace and heliport.

The HTA is established only for the purpose of controlling helicopters using the Volcano Heliport. These Rules and Regulations have no authority to control other helicopters and aircrafts that use the airspace.

6. HELIPORT: The Volcano Heliport is private and not open for public use. The Volcano Heliport is designed for normal operation by one (1) helicopter. Accordingly, the Heliport shall be used by one (1) helicopter designated by the owner, hereafter called the Designated Helicopter. A second helicopter may be allowed use of the Volcano Heliport for emergencies and special conditions only as provided herein. The second helicopter may be allowed for the following reasons:

- a. Emergency Medical Service (EMS).
- b. Fire and Rescue.
- c. Official Government use.
- d. The replacement of the Designated Helicopter by a replacement unit for maintenance.

7. DESIGNATED HELICOPTER: The designated helicopter shall be a light, single engine turbine helicopter. The helicopter shall be equipped as required by the FAA in the FAR Part 135 Rules and Regulations.

8. QUALIFICATION OF OPERATION: The Designated Helicopter shall be operated by an operator that is certificated by the FAA under FAR Part 135, Certification of Air Taxi and Charter Operator.

9. PILOT QUALIFICATION: Pilots operating the Designated Helicopter shall be properly certificated by the FAA and thoroughly knowledgeable about these Rules and Regulations.

10. AVAILABILITY OF RULES AND REGULATIONS: These Rules and Regulations shall be published and a copy kept at the Heliport and another in the Designated Helicopter at all times.

11. LIMITATION TO OPERATIONS: The Heliport shall not be used for instrument approach or departure. Only flights meeting the FAA requirement for Visual Flight Rules (VFR) and Special Visual Flight Rules (SVFR) shall be permitted.

12. HOURS OF OPERATIONS: The Heliport shall be open for operation strictly according to the following schedule:

- Winter Schedule: 8:00 a.m. to 5:00 p.m.
- Spring/Summer/Fall Schedule: 7:30 a.m. to 6:00 p.m.

Emergency medical service and fire/rescue will be exempted from the scheduled hours of operation. However, under no circumstances, will there be any operation before sunrise and after sunset.

13. AUTHORIZED USE OF HTA: Flights into the HTA shall be for the sole purpose of making an approach or departure to or from the Heliport for landing or takeoff.

14. HTA FLIGHT RULES: While in the HTA, helicopter flight shall comply to the following Rules and Regulations:

- a. Standard Routes. Except as provided herein, approach and departures shall be made only on the four (4) Standard Approach/Departure Routes shown on the map titled "Heliport Terminal Area, Volcano Heliport". Deviation from the Standard Approach/Departure Routes shall be permitted only for the following reasons:

- (1) Aircraft emergency.

- (2) Collision avoidance when the airspace is used by another aircraft.
- (3) Passenger Emergency.

The allowed deviation shall not enter the Prohibited Residential and Noise Abatement Buffer Zones.

b. Final Approach/Initial Departure. The final 4,000 feet of ground track in making an approach is termed the FINAL APPROACH. The First 4,000 feet of ground track after take off is termed the INITIAL DEPARTURE. The Final Approach/Initial Departure flight path shall be made as shown on the map titled "Heliport Terminal Area, Volcano Heliport" and more particularly as described by the plan marked "Final Approach/Initial Departure Plan and Profile". The map and plan show the path of the flight by check points, altitude profile, and heights above ground level (AGL) at the pertinent check points.

c. Noise-Abatement Final Approach Procedures.

- (1) When commencing Final Approach, follow one of these two procedures:
  - Establish a rate-of-descent of at least 500 fpm before reducing airspeed, then reduce airspeed while increasing rate-of-descent to at least 800 fpm, or
  - Hold rate-of-descent to less than 200 fpm while reducing airspeed to about 65 mph, then increase rate-of-descent to at least 800 fpm.
- (2) At a convenient airspeed between 60 and 90 mph, set up approach glide slope while maintaining the 800-fpm or more rate-of-descent.
- (3) Increase rate-of-descent if the main rotor tends to slap, or if you want a steeper glide slope.
- (4) Approaching the flare, reduce airspeed to below 70 mph before decreasing rate-of-descent.
- (5) Execute normal flare and landing, decreasing rate-of-descent and airspeed appropriately.

The basic difference between this approach technique and a normal one is that this method avoids the slap regime. See Figures 1 & 2. Both procedures give approximately the same airspeed during the approach, with the quieter technique using a glide slope which is a few degrees steeper. Once the pilot has transitioned from cruise to the approach glide slope, he can tailor his airspeed and rate of descent to fit local conditions, avoid unsafe regimes, and still guarantee minimum noise.

d. Initial Departure. Takeoffs are reasonably quiet operations, but the total ground area exposed to helicopter sound can be limited by using a high rate-of-climb and making a very smooth transition to forward flight.



- e. Airspeed. Before final approach and after initial departure, airspeeds shall be the normal maneuvering speed of the helicopter according to FAA Category A. Approach and Departure Flights, while in the HTA, shall be flown at appropriate speeds of making an approach and departure. There shall be no intentional attempt to delay, prolong, or circle during any portion of the flight while in the HTA.
- f. Altitude. Before final approach and after initial departure, altitude shall be 500 feet above ground level (AGL) or as regulated by the FAA or National Park Service.
- g. Communication. The Designated Helicopter shall be equipped with a transceiver radio, VHF/COM, operating in the range of 118-135 MHz. Before entering the HTA or before departing from the Heliport, pilot shall declare his intentions in the manner prescribed by the FAA on UNICOM frequency 122.90 or any other frequency determined to be appropriate in cooperation with the FAA, the National Park Service and the Kilauea Military Camp.

Figure 1

NOISY FLIGHT OPERATIONS--LIGHT HELICOPTERS

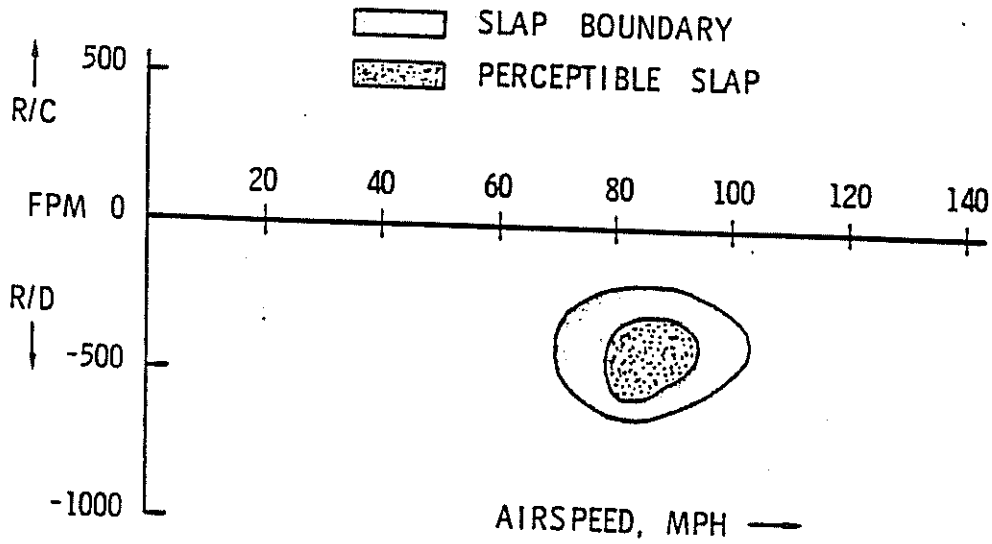


Figure 2

NOISE - ABATEMENT FLIGHT TECHNIQUE--LIGHT HELICOPTER

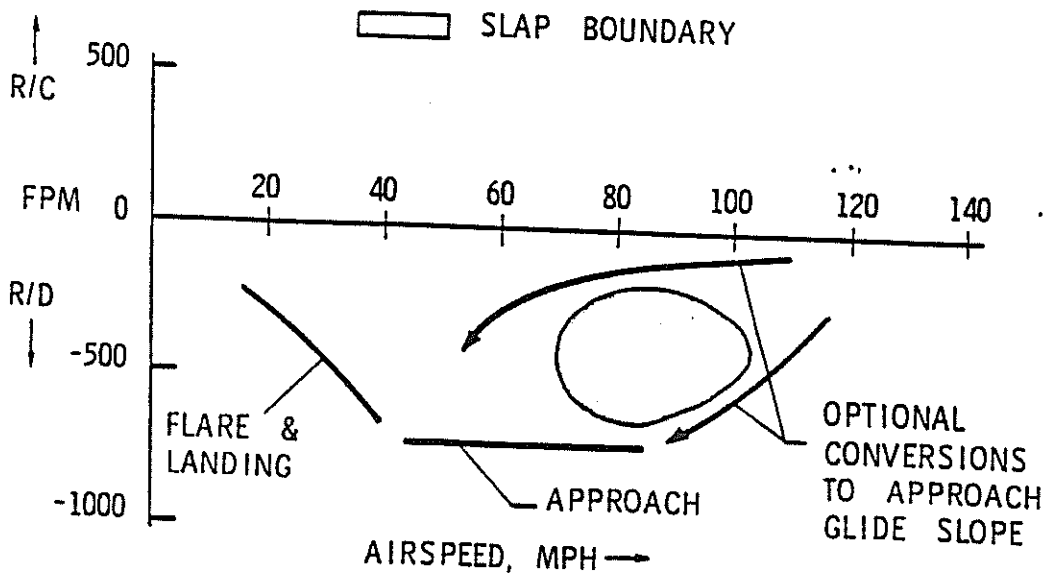
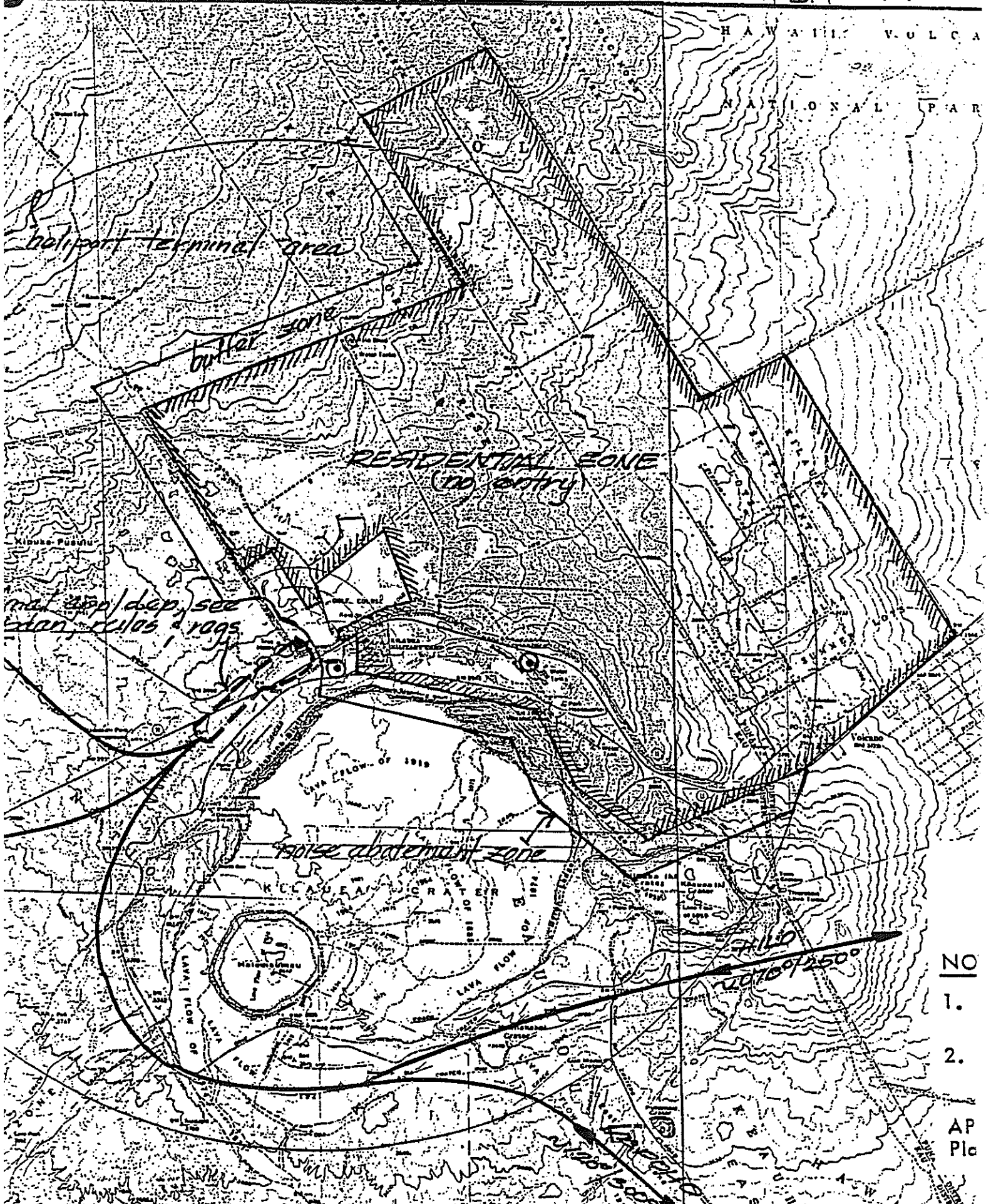


EXHIBIT "A"

INDEX

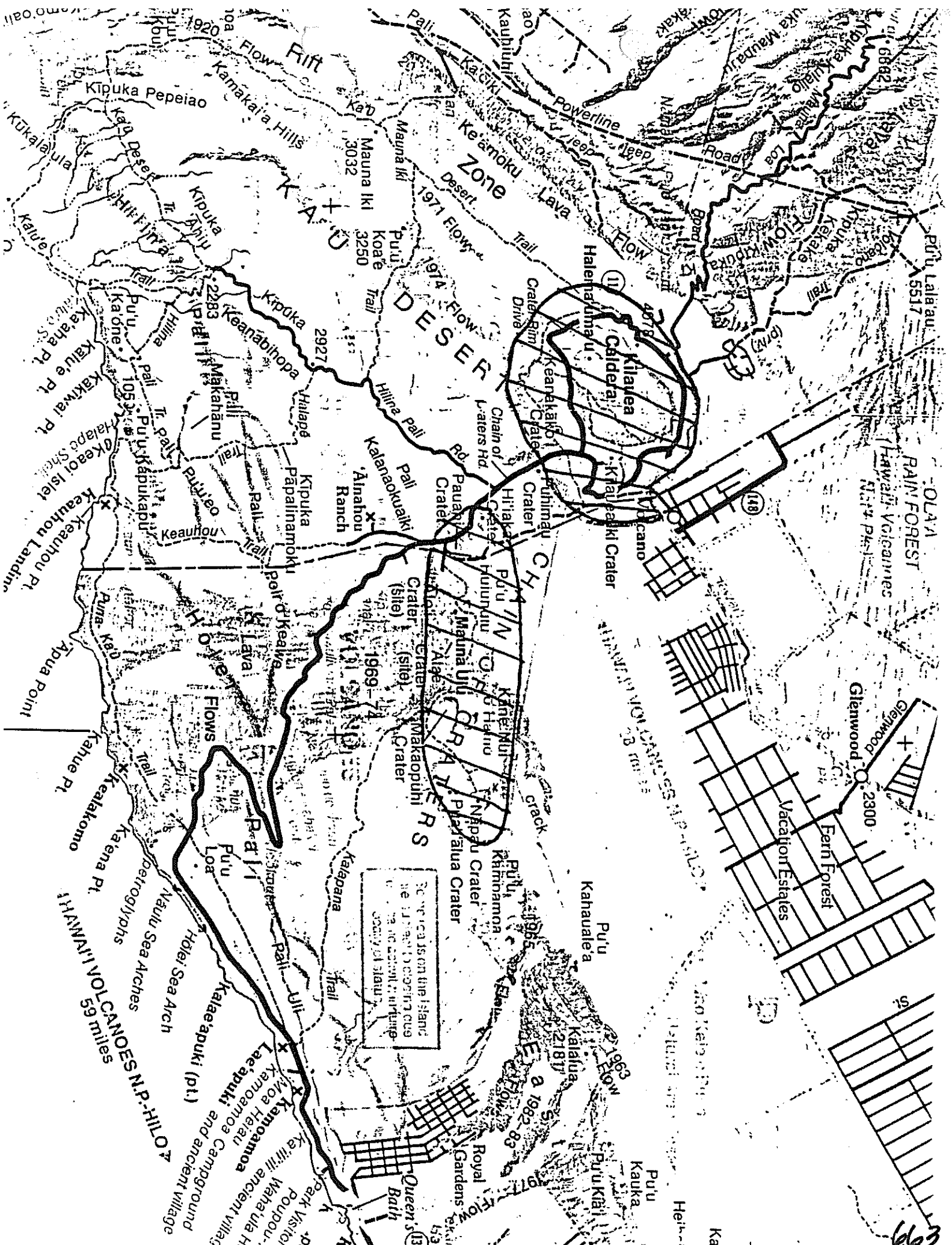
PLANS



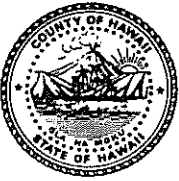
NO

- 1.
- 2.

AP  
Plc



See records on the island  
 for the 1969 eruption  
 of Kilauea Inactive Craters  
 and the 1982 eruption  
 of Kilauea Inactive Craters



# Planning Commission

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

Lorraine R. Inouye  
Mayor

## CERTIFIED MAIL

March 11, 1992

Mr. Richard Okita  
Manuiwa Airways, Inc.  
1655 Makaloa Street, Suite 2701  
Honolulu, HI 96814

Dear Mr. Okita:

Five-year Time Extension to Use Permit No. 21  
Applicant: Manuiwa Airways, Inc.  
Tax Map Key: 9-9-06:Portion of 7

The Planning Commission at its duly held public hearing on February 27, 1992, voted to approve your five-year time extension to Condition F (life of permit) of Use Permit No. 21, which allowed the establishment of the Volcano heliport. The site is within the Volcano Golf and Country Club property in the vicinity of the 18th Fairway, Keauhou, Ka'u, Hawaii.

Approval of this request is based on the following:

The granting of a time extension is consistent with the original reasons for the granting of the Use Permit. The continued use will not cause substantial adverse impact to the surrounding properties. The applicant's acoustic study indicated that the heliport is sufficiently separated from surrounding residential areas to avoid excessive noise impacts. The study states that the "ambient less 5 Ldn" complaint criteria can be met at an average of 8 tour flights per day as long as the indicated ingress and egress routes are followed and as long as static operations (ground idle, flight idle, and hover) are not excessive. No evidence has been submitted to indicate that the heliport use has negatively impacted the nene population.

The Superintendent of the National Park and some neighboring property owners have stated that the use of the heliport has resulted in negative noise and visual impacts. The heliport is situated approximately 50 feet away from the Volcanoes National Park Boundary and approximately 2,300 feet

MAR 12 1992

Mr. Richard Okita  
March 11, 1992  
Page 2

away from a single-family residential subdivision. The Superintendent of the National Park has recommended that the time extension request be denied. He has stated that the applicant's flight path over forest areas with high populations of native birds may cause harm to native bird populations within the park.

It is, therefore, recommended that additional conditions be included to mitigate impacts to surrounding properties and the National Park. It is recommended that hours of operation be limited to between 8:00 a.m. and 5:30 p.m. to minimize disturbance to neighboring residents. In regard to the disturbance of forest birds, it is recommended that flight avoidance areas be established in the vicinity of the park's most intact forests where high native bird populations are found.

This recommendation is to allow temporary use of the site in order to allow the applicant time to work toward relocation of his operation to an approved heliport. It should be noted that the applicant has been diligent in complying with the stated conditions of approval of the permit and has attempted to limit negative impacts of his operations. The applicant's participation in emergency helicopter support services to the community is also recognized. For these reasons, it is recommended that the heliport be restricted to use by only ManuIwa Airways, Inc. except in the case of emergency.

It is, therefore, recommended that the request for a five-year time extension to the life of the permit be approved. It is further recommended that additional conditions be imposed to limit the hours of operation and the number of landings and to avoid noise sensitive areas within the National Park pending further regulations affecting park overflights.

Approval of this request is subject to the following conditions (material to be deleted is bracketed and material to be added is underlined):

- [a] 1. The petitioner[, its successors or assigns] shall be responsible for complying with all conditions of approval. This permit shall be valid only for the current applicant, ManuIwa Airways, Inc.

Mr. Richard Okita  
March 11, 1992  
Page 3

- [b] Plans for plan approval shall be submitted within one year from the effective date of approval of the Use Permit. Final plan approval will not be issued, however, until written authorization from the Kamehameha Schools/Bernice Pauahi Bishop Estate is provided for the construction of the proposed facilities.]
- [c] 2. The rules and regulations submitted for the Volcano Heliport, dated July 31, 1984, [is] are hereby incorporated by reference (see attached) and shall be binding on the operator of the heliport as a condition of approval. These rules and regulations may be amended only after review and concurrence of the Federal Aviation Administration and the County Planning Commission with the exception that hours of operation shall be further limited to between 8:00 a.m. and 5:30 p.m.
- [d.] Construction of the proposed facility shall commence within one year from the date of receipt of final plan approval and be completed within one year thereafter.]
- [e] 3. The helipad shall consist of a maximum area of 95' x 95' that is leveled and grassed. Within this area there will be a maximum of two concrete pads approximately 20' x 20' in size. This 95' x 95' area shall be surrounded by a bordering hedge. The helipad shall be situated within the southwest tip of the golf course property and sited a minimum of 100' from the western boundary of the National Park. The exact siting of the helipad area, however, shall take into consideration the safety of the golfers, visitors to the tree mold viewing area and the clients of the petitioner.
- [f] 4. This permit shall be effective for a [one] five-year period starting from the effective date of [commencing operations] this amendment with no requirement to renew. [The petitioner shall notify the Planning Department of the date of commencement within 30 days of that date. The permit may be extended by the Planning Commission at its discretion.]
5. Flight operations shall be limited to a maximum of eight landings per day, with the exception of landings involving emergency helicopter support.

Mr. Richard Okita  
March 11, 1992  
Page 4

6. Flights using the heliport shall observe sound abatement procedures as recommended by the Hawaii Helicopter Operators Association Helicopter Sound Abatement Procedures Manual. Flights using the heliport shall maintain a minimum 500 foot above ground level (AGL) flight path over the Volcanoes National Park and shall avoid areas shown on the attached map labelled as Exhibit "B" in addition to existing avoidance areas shown in Exhibit "A".
7. The applicant shall be responsible for the prevention of fires arising from the helicopter use of the property.
8. [The petitioner shall be responsible to initiate consultation with federal (Department of Interior, Fish and Wildlife Division) and state (Department of Land and Natural Resources, Fish and Wildlife Division) endangered species agencies at least once a year to discuss his operation and its impact on the nene. Written reports of consultation with these agencies shall be filed with the Planning Department no later than August 15 of each year. The Planning Commission shall terminate the permit if it finds that the heliport use is a nuisance to either the nene population or to surrounding property owners.]  
An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of this amendment. The report shall include but not be limited to complaints received, disposition of complaints, and a log of flights deviating from the "Rules and Regulations for the Volcano Heliport". The annual report shall include an impact analysis on the Nene population which shall be reviewed by the Department of the Interior and the Department of Land and Natural Resources. If the heliport is found to be negatively impacting surrounding properties or the Nene population, the Planning Director shall initiate revocation of the Use Permit.
- [9] 9. The petitioner shall be responsible for operating the heliport facility in the manner prescribed by the rules and regulations incorporated in condition [(c)] "2" above. Alleged violations of these rules may cause the Planning Director to schedule a public hearing before the Planning Commission to determine whether a violation has in fact occurred.



Mr. Richard Okita  
March 11, 1992  
Page 5

- [h] 10. All other applicable laws, rules, regulations and requirements shall be complied with.
- [i] 11. Should the Planning Director determine that any of the above conditions have not been met, or substantially complied with in a timely fashion, [the Use Permit shall be void] the Director shall initiate procedures to revoke the 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.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,

*Mike Luce*

Mike Luce, Chairman  
Planning Commission

7145d  
jdk

xc: Mayor  
Planning Director  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
West Hawaii Office  
DLNR-Fish & Wildlife  
Dept. of Interior-Fish & Wildlife Service  
Federal Aviation Administration  
Kamehameha Schools/Bernice Pauahi Bishop Estate  
Plan Approval Section



# Planning Commission

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

Lorraine R. Inouye  
Mayor

CERTIFIED MAIL

December 19, 1991

Mr. Richard Okita  
Manuiwa Airways, Inc.  
1655 Makaloa Street, Suite 2701  
Honolulu, HI 96814

Dear Mr. Okita:

Five-year Time Extension to Use Permit No. 21  
Applicant: Manuiwa Airways, Inc.  
Tax Map Key: 9-9-06:Portion of 7

The Planning Commission at its meeting of December 12, 1991, voted to continue the public hearing on the above-referenced request due to insufficient votes required for action. The Commission also voted to extend flight operation until a decision can be reached on the time extension request.

You will be notified as to the date, time and place of the continued hearing as soon as they are determined.

Should you have any questions in the meantime, please feel free to contact Daryn Arai or Connie Kiriu of the Planning Department at 961-8288.

Sincerely,

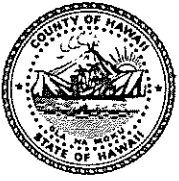
*Mike Luce*

Mike Luce, Chairman  
Planning Commission

6966d  
jdk

cc: Randall F. Sakumoto, Esq.  
Planning Director  
Mayor

DEC 20 1991



# Planning Commission

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

Lorraine R. Inouye  
Mayor

CERTIFIED MAIL

November 7, 1991

Mr. Richard Okita  
Manuiwa Airways, Inc.  
1655 Makaloa Street, Suite 2701  
Honolulu, HI 96814

Dear Mr. Okita:

Five-year Time Extension to Use Permit No. 21  
Applicant: Manuiwa Airways, Inc.  
Tax Map Key: 9-9-06:Portion of 7

The Planning Commission at its duly held public hearing on October 30, 1991, reviewed the above-referenced application.

The Commission voted to close the public hearing, then was unable to carry various motions in approving or amending conditions of approval for the requested time extension.

Finally, the Commission voted to reopen and continue the public hearing. The Commission also voted to extend flight operations until a decision can be reached on the time extension request.

You will be informed as to the date, time and place of the continued hearing as soon as they have been determined.

If you should have any questions in the meantime, please feel free to contact Anna Link or Connie Kiriu of the Planning Department at 961-8288.

Sincerely,

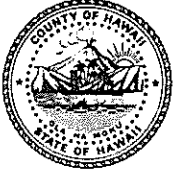
*Mike Luce*

Mike Luce, Chariman  
Planning Commission

6828d  
jdk

xc: Randall F. Sakumoto, Esq.

NOV - 8 1991  
NOV - 8 1991



# Planning Commission

Lorraine R. Inouye  
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

August 23, 1991

Mr. Richard Okita  
Manuiwa Airways, Inc.  
1655 Makaloa Street, Suite 2701  
Honolulu, HI 96814

Dear Mr. Okita:

Time Extension to Condition F of Use Permit No. 21  
and Continuation of Heliport Operations within 90-Day Period  
Until 5-Year Time Extension is Scheduled for Hearing  
Applicant: Manuiwa Airways, Inc.  
Tax Map Key: 9-9-06:Portion of 7

The Planning Commission at its duly held public hearing on August 15, 1991, voted to approve your request for a 90-day time extension ("grace period") in which to submit additional information to support the applicant's pending request for a 5-year time extension to Condition No. F (life of the permit-August 15, 1991) of Use Permit No. 21, which allowed the establishment of the Volcano heliport. Also approved was your request to continue heliport operations within the 90-day period until the 5-year time extension is scheduled for hearing. The site is within the Volcano Golf and Country Club property in the vicinity of the 18th Fairway, Keauhou, Ka'u, Hawaii.

Approval of these requests are based on the following:

The applicant has been conducting the heliport on the property since 1984. It is felt that an additional 90-day operation period will not be materially detrimental to the public welfare or cause substantial, adverse impact to the community's character or to surrounding properties. The applicant has attempted to comply with conditions of approval in a timely manner. The extension will allow him to continue his business until the Commission can receive adequate information to make an informed decision on a longer time extension request to operate a heliport on the property.

AUG 23 1991

Mr. Richard Okita  
August 23, 1991  
Page 2

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Mike Luce, Chairman  
Planning Commission

6621d  
jdk

xc: Randall F. Sakumoto, Esq.  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
West Hawaii Office  
Plan Approval Section

CERTIFIED MAIL

July 30, 1986

Mr. Richard Y. Okita, President  
Manuiwa Airways, Inc.  
dba HiloCopters  
1655 Makaloa Street, Suite 2701  
Honolulu, HI 96814

Dear Mr. Okita:

Request to Extend Life of Use Permit No. 21  
Tax Map Key: 9-9-06:portion of 7

The Planning Commission at its duly held public hearing on July 24, 1986, voted to approve the extension of Use Permit No. 21 for an additional five-year period rather than on a permanent basis.

Approval is based on the following:

We have determined that the original findings and recommendation on the establishment and continued use of the heliport use are still valid. The community benefits that this operation has provided for the County should also be recognized and commended. In addition, there were no complaints filed with the Planning Department during the first year of operation. Nevertheless, it is felt that the one year time period was not adequate to fully assess the impact of this use and its operation to the residents and the nene population in the area. As such, it would be prudent to continue to monitor the operation of the heliport for at least another five-year period. By continuing to monitor the operation, we can be more fully informed about the need to apply other conditions, if necessary, to protect the public's health and safety and the nene habitat from this operation in this area.

Based on the foregoing, it is determined that a five-year extension of this Use Permit be granted commencing on August 15, 1986, with the following additional condition:

JUL 30 1986

Mr. Richard Y. Okita, President  
July 30, 1986  
Page 2

1. The petitioner shall be responsible to initiate consultation with federal (Department of Interior, Fish and Wildlife Division) and state (Department of Land and Natural Resources, Fish and Wildlife Division) endangered species agencies at least once a year to discuss his operation and its impact on the nene. Written reports of consultation with these agencies shall be filed with the Planning Department no later than August 15 of each year. The Planning Commission shall terminate the permit if it finds that the heliport use is a nuisance to either the nene population or to surrounding property owners.

All other applicable conditions of approval of Use Permit No. 21 shall remain in effect.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Barbara A. Koi  
Chairperson, Planning Commission

cc: David B. Ames  
Ronald E. Bachman  
Russ Apple  
Guido Giacometti  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Hawaii County Services, Deputy Managing Director's Office

bcc: Plan Approval Section

CERTIFIED MAIL

September 17, 1984

Mr. Richard Y. Okita  
HELICOPTERS  
1655 Makaloa Street, Suite 2701  
Honolulu, HI 96814

Dear Mr. Okita:

Use Permit Application  
TMK: 9-9-06:Portion of 7

The Planning Commission at its duly held public hearing on September 12, 1984, voted to approve your application, Use Permit No. 84-1, to allow the establishment of a heliport and related improvements within the Volcano Golf and Country Club property, adjacent and on the makai side of the 18th Hole, Keauhou, Ka'u, Hawaii.

Approval of this request is based on the following:

Approval of this Use Permit request is subject to the following conditions:

- a. The petitioner, its successors or assigns, shall be responsible for complying with all conditions of approval.
- b. Plans for plan approval shall be submitted within one year from the effective date of the Use Permit. Final Plan Approval will not be issued, however, until written authorization from the Kamehameha Schools/Bernice Pauahi Bishop Estate is provided for the construction of the proposed facilities.
- c. The Rules and Regulations submitted for the Volcano Heliport, dated July 31, 1984, is hereby incorporated by reference (see attached) and shall be binding on the




operator of the heliport as a condition of approval. These rules and regulations may be amended only after review and concurrence of the Federal Aviation Administration and the County Planning Commission.

- d. Construction of the proposed facility shall commence within one year from the date of receipt of Final Plan Approval and be completed within one year thereafter.
- e. The helipad shall consist of a maximum area of 95' x 95' that is leveled and grassed. Within this area there will be a maximum of two concrete pads approximately 20' x 20' in size. This 95' x 95' area shall be surrounded by a bordering hedge. The helipad shall be situated within the southwest tip of the golf course property and situated a minimum of 100' from the western boundary of the National Park. The exact siting of the helipad area, however, shall take into consideration the safety of the golfers, visitors to the tree mold viewing area and the clients of the petitioner.
- f. This permit shall be effective for a one-year period starting from the date of commencing operations. The petitioner shall notify the Planning Department of the date of commencement within 30 days of that date. The permit may be extended by the Planning Commission at its discretion.
- g. The petitioner shall be responsible for operating the heliport facility in the manner prescribed by the rules and regulations incorporated in condition (c) above. Alleged violations of these rules may cause the Planning Director to schedule a public hearing before the Planning Commission to determine whether a violation has in fact occurred.
- h. All other rules, regulations, and requirements shall be complied with.
- i. Should the Planning Director determine that any of the above conditions have not been met, or substantially complied with in a timely fashion, the Use Permit shall be void.

Mr. Richard Y. Okita  
Page 3  
September 17, 1984

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely

  
Roy Kagawa  
Chairman, Planning Commission

Enclosures

cc: Mr. Russell Apple w/enc. PO Box 32, Hi, Nat'l Park 96718  
Mr. Sydney Keliipuleole w/enc. Kamehameha Schools/Bernice Pauahi Bishop Estate  
Chief Engineer, Dept. of Public Works w/enc. PO Box 3466, Hon, 96801  
Dept. of Water Supply w/enc.  
Real Property Tax Division w/enc.  
Kona Services Office w/enc.

bcc: Plan Approval Section w/enc.