Stephen K. Yamashiro
Mayor

County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL
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NOV 2 5 1997

Mr. Michael D. Tuttle
P.O. Box 785
Volcano, HI 96785

Dear Mr. Tuttle:

Use Permit Application (USE 97-7)
Applicant: Michael D. Tuttle
Request: Establish a Five-Bedroom Bed and Breakfast Operation
Tax Map Key: 1-1-5:19

The Planning Commission at its duly held public hearing on November 12, 1997, voted to reaffirm their September 26, 1997, decision to approve the above application. Use Permit No. 165 is hereby issued to allow the establishment of an existing five-bedroom bed and breakfast operation (Hale Ohia Cottages) within an existing dwelling and a guest house situated on approximately 34,163 square feet of land within the County Single Family Residential (RS-20) zoned distrct. The property is located within the Hale Ohia Tract Subdivision on Hale Ohia Road approximately 65 feet to the south of its intersection with Volcano Road (Highway 11) at Volcano, Puna, Hawaii.

Approval of this request is based on the following:

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits, requires that such action conform to the following guidelines:

A. The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan;

B. 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 or to surrounding properties; and

C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

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The five-bedroom bed and breakfast operation meets the guidelines for approval of a Use Permit, for the reasons outlined below.

The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses, as well as consistency with the goals and polices of the General Plan. According to the Zoning Code, Single Family Residential districts "provide for lower or low and medium density residential use, for urban and suburban family life." This includes bed and breakfast operations, which are considered accessory or subordinate to the principle use of the property as a residence. The County Zoning Code, Section 25-4-7, provides guidelines for bed and breakfast operations. This section also provides for a process in which an existing bed and breakfast operation can operate as a non-conforming use until September 1997. The operator can apply for applicable permits by June 30, 1997 and upon issuance of applicable permits, be considered a permitted use. In this particular situation, the applicant has been in operation since 1992 and is applying for a Use Permit to conform to the Zoning Code requirements. The applicant lives on the subject parcel and in review of the request, the existing bed and breakfast operation does meet with the requirements of the Zoning Code, Section 25-4-7(b), regarding bed and breakfast establishments.

Bed and breakfast accommodations are becoming increasingly popular with visitors to the island, who seek a quieter, more authentic experience of local life. Bed and breakfast businesses provide an economic opportunity for County residents, who can supplement their incomes by sharing their homes with visitors. Recognizing this benefit, Ordinance No. 92-104 was originally passed by the County Council in 1992 (with recent amendments to the Zoning Code in 1996), to allow for bed and breakfast operations. Restrictions and standards continue to focus on the use remaining secondary to the principal use of the property as a residence. On Residential zoned lands within a State Land Use Urban District, impacts from bed and breakfast operations can be properly addressed and mitigated through the securance of a Use Permit.

The applicant is requesting to allow the continued operation of a five-bedroom bed and breakfast establishment. The applicant presently resides in the existing main dwelling, but will move and reside in the dwelling known as the "Ohia Cottage." The bed and breakfast operations are in the existing "Ohia Cottage" which is approximately 1,3229 square feet in size and a guest house, known as the "Lehua Cottage" which is approximately 244 square feet in size. Thus, the bed and breakfast activities would complement and be accessory to the use of the property as a residence. A person is hired to assist in mowing and maintaining the grounds and the applicant anticipates hiring a cleaning person. Adequate utilities and services are available at the site. The property is surrounded by forest and landscaped with sugi pines, camellias, azaleas, ohia, hapuu fern, golden cypress, wisteria, rare hydrangeas, junipers, Japanese maples, holly and pines. The 3-car carport and guest parking areas are graveled to accommodate guest parking; which should eliminate erosion, mud and standing water.

The General Plan designation for this area is Low Density Urban Development, which allows for single-family residential uses, ancillary community and public uses and convenience-type commercial uses. As the proposed bed and breakfast operation will be established in an existing dwelling and guest house, the uses should not alter the appearance or character of the neighborhood. Although the bed and breakfast establishment would be open to the public on a daily basis, reservations will be taken directly by the applicant. Advertising would be placed in publications and on the internet.

The bed and breakfast operation would complement the following goals and policies of the General Plan:

Economic Element

* Provide residents with opportunities to improve their quality of life.

* Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.

* The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

* The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.

* The County of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical and economic goals of the residents of the County.

Land Use Element

* Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.

* The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Therefore, the bed and breakfast establishment would operate within the parameters of being single-family residential in character, is consistent with the General Plan designation and is in keeping with the policies of the General Plan.

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 or to surrounding properties. The immediate surrounding area is vacant land. Other lands in the surrounding area have scattered residential uses within Mauna Loa Estates and Volcano Village on RS-20 zoned lands. The existing dwelling, guest house and

parking areas can accommodate the bed and breakfast operation. The property is forested and landscaped to mitigate any possible visual or noise impacts on the neighbors. Adequate public services and facilities are also available to accommodate the existing use.

There are two approved bed and breakfast establishments in Mauna Loa Estates. One is an operation run by Tommy and Brenda Carson who secured Use Permit No. 123 (TMK: 1-1-8-112) in 1994 for three bedrooms and which is located on Sixth Street in the vicinity of Pearl Avenue. Joan Earley also secured Use Permit No. 158 (TMK: 1-1-09:20) for two bedrooms in July, 1997 and is located on the corner of Eighth Street and Ruby Avenue. There are two approved bed and breakfast establishments within Volcano Village. One is an 6-room inn, operating like a bed and breakfast, along the Old Volcano Road. The inn is operated by Gordon and Joann Morse who secured Special Permit No. 966 (TMK: 1-9-3-10, 20 & 21) in May 1997. The other is a 4-bedroom bed and breakfast operation located along Wright Road which is owned by Brian Crawford who secured Special Permit 792 (TMK: 1-9-18:01) in December 1991. Kilauea Lodge and Restaurant is also located along the Old Volcano Road, on CV-10 and CV-20 zoned lands, and provides overnight accommodations in 12 units. Effective May 1995, Change of Zone Ordinance No. 95-101 was approved by the County Council to rezone additional land to the rear of the existing lodge to allow for expansion of an additional 12-20 lodging units. As the applicant has been in operation since 1992, it is not anticipated that the approval of the request will have a negative impact on the existing community character or to surrounding properties.

The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure. The subject property is accessed from Volcano Highway (Highway 11) onto Hale Ohia Road. There is adequate guest parking areas on site and the applicant owns the road leading to the subject property. As such, it is not anticipated that guests of the bed and breakfast establishment will substantially increase traffic or have a major effect on the existing roadways. Water is provided by a catchment system, however, drinking water shall meet the Department of Health standards. Wastewater will be disposed of into existing cesspools. The applicant would be required to comply with all other applicable agency requirements, including any requirements of the Department of Health. Finally, agencies reviewing the request had no objections to the establishment of the bed and breakfast operation at this location.

Based on the above, it is determined that the request to allow the establishment of an existing five-bedroom Bed and Breakfast operation in a single-family dwelling and a guest house on the subject property be approved.

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

1. The applicants, successors, or assigns shall be responsible for complying with all stated conditions of approval.

2. The landowner/operator shall reside in the dwelling known as "Ohia Cottage."

3. Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-72, 25-2-73 and 25-4-7, within six (6) months of the effective date of this permit. Plans shall identify existing and proposed structures, driveway, landscaping, fire protection measures, five graveled parking stalls (asphalt or concrete) and exterior signs associated with the business.

4. The bed and breakfast operation shall be limited to the use of five bedrooms.

5. Drinking water shall meet the Department of Health standards and only breakfast meals may be offered to guests.

6. Comply with all applicable requirements as stated in the Zoning Code, Section 25-4-7, regulating bed and breakfast establishments.

7. Comply with all applicable laws, rules, regulations and requirements of other affected agencies, including the Department of Health.

8. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.

9. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

10. An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:

    A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successor, or assigns, and that are not the result of their fault or negligence.

    B. Granting of the time extension would not be contrary to the original reasons for granting of the permit.

    C. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

    D. The time extension granted does not exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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

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

Sincerely,

Kevin M. Balog, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Kazu Hayashida, Director/DOT-Highways, Honolulu
Aaron Ueno/Department of Health