County of Hawai'i

LEEWARD PLANNING COMMISSION

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

AUG 1 2 2011

Mr. Rocky Snider
Corporation of the Presiding Bishop, The
Church of Jesus Christ of Latter Day Saints
31500 Grape Street, Suite 3-200
Lake Elsinore, CA 92532-9702

Dear Mr. Snider:

Special Permit Application (SPP 11-000118)
Use Permit Application (USE 11-000025)
Request: To Develop and Operate a Meeting House (Church) and Related Improvements
Applicant: Corporation of the Presiding Bishop, The Church of Jesus Christ Of Latter Day Saints
Tax Map Key: 8-1-004:005

The Leeward Planning Commission at its duly held public hearing on July 21, 2011, voted to approve the above-referenced applications for a special permit and use permit to allow the construction and establishment of a church meeting house and related improvements on 5.273 acres of land situated within the State Land Use Agricultural & Urban Districts and the County's Single Family Residential (RS-15) zoned district. The property is located at 81-6493 Hawai'i Belt Road, which is at the northwest corner of the intersection of Hawai'i Belt Road (Māmalahoa Highway) and Onouli Road at Onouli 1st, South Kona, Hawai'i.

Special Permit

The applicant is requesting a Special Permit to allow the construction and establishment of a "meeting house" (church) and related improvements on 5.273 acres of land of which 2.852 acres is situated within the State Land Use Agricultural district. The meeting house will allow for Sunday services, weekday services and social activities, and

weekend events. The meeting house will accommodate as many as three (3) congregations, which are known as Wards. The proposed improvements will include:

- Meeting house (17,247 square-foot, one-story structure).
- Storage building (168 square-foot, one-story structure).
- Parking, perimeter fencing and landscaping.

The operations will consist of the following activities:

- Sunday services: Services for as many as three (3) Wards, which will be held during three-hour blocks at alternating times. Each Ward will meet during a three-hour block of time with the possibility of some overlap between Ward services. The maximum amount of patrons with the overlapping services would not exceed 350 persons.
- Weekday nights: Each Ward will use the building one night a week services from Tuesday through Thursday from 7 p.m. to 9 p.m. with an average of 20 to 50 persons with an occasional attendance of 150 persons Other groups may utilize the facility during weeknights such as the Cub Scouts, Boy Scouts, etc.
- Weekday days: Activities would include Cub and Boy Scout meetings, socials, fellowship, sports activities, spiritual lessons, etc., which will be minimal and will average approximately 20 to 40 persons.
- Weekends: Occasional Friday and Saturday events may include social or spiritual gathering including youth dances, meetings, wedding receptions, birthday and graduation parties, baptisms, holiday gatherings, etc. Weekend gatherings or meetings typically range in size from approximately 20 to 150 persons with occasional attendance of approximately 350 persons.

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District. In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

The applicant is requesting a Special Permit to allow the construction and establishment of a "meeting house" (church) and related improvements, which will provide a needed community service to Kealakekua and the surrounding areas. The property, which is 5.273 acres in size, is split zoned with approximately half of the property situated within the State Land Use Agricultural district and the other half situated within the State Land Use Urban district. It is in an area identified for future urban growth in the General Plan and the Kona Community Development Plan.

In reviewing the proposed request, the property is limited in regards to the agricultural potential that can be reasonably achieved. The limits are a result of several factors including the small size of the agricultural area (2.8 acres) for potential commercial-scale agricultural pursuits, the steep topography, and the split-zoning of the property, which prohibits agricultural activities on the urban zoned half of the property. The relatively small size of the Agriculturally-designated lands and its proximity between Urban-designated lands and Konawaena Elementary School would preclude intensive agricultural use of the property due to the potential conflicts with these urban uses. The proposed request, therefore, is a reasonable alternative that will benefit the community.

Based on the above discussion, it is determined that the subject request is considered an unusual and reasonable use of agricultural land.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The project site is situated on soil identified as Honaunau extremely rocky silty clay loam, 6 to 20 percent slopes, and Kainaliu very stony silty clay loam, 12 to 20 percent slopes by the USDA Soil Survey Report. Additionally, half of the property is classified as Class "B" or "Good" soil and the other half as Existing Urban Development by the Land Study Bureau's Overall Master Productivity Rating. Lastly, half of the property is identified as "Other Important Agricultural Land" and the other half as Existing Urban Development on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map.

Although half of the property is identified as Class "B" soil and "Other Important Agricultural Land", the other half of the property is identified as Existing Urban Development. Additionally, the property is not identified as Prime Agricultural Land, so the proposed request will not adversely affect the preservation and agricultural use of the County's prime agricultural lands. Lastly, the area situated within the State Land Use

Agricultural district is less than 3 acres in size and diminishes the possibility of utilizing the area for commercial agricultural uses. This is compounded by the fact that the other half of the property is zoned for urban uses and does not allow agricultural uses.

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

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

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The subject request is considered an unusual and reasonable use of the agricultural land and will not adversely affect the preservation and agricultural use of the County's prime agricultural lands. Therefore, the proposed request is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The property is located at the northwest corner of the intersection of Hawai'i Belt Road (Māmalahoa Highway) and Onouli Road. The property is split zoned with 2.852 acres situated within the State Land Use Agricultural district and the County's Agricultural (A-5a) zoned district, and 2.421 acres situated within the State Land Use Urban district and the County's Single Family Residential (RS-15) zoned district. The parcel is currently vacant is uses and structures.

The property is situated in a manner that will minimize adverse noise and visual impacts to the surrounding properties. The property is buffered by the Hawai'i Belt Road to the east, Onouli Road to the south, and Konawaena Elementary School to the west. The nearest single family dwelling is located on the approximate 40-acre property to the north. The meeting house will meet the required setbacks and required landscaping through the Plan Approval process to further minimize any adverse noise and visual impacts that may be generated by the proposed request. All of the proposed activities will occur during off-peak traffic periods and the applicant will be providing sufficient on-site parking.

Based on the above discussion, no significant adverse impact to surrounding properties is expected. In addition, the Planning Department received no objections or concerns from the community.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the project site is from Onouli Road, which is a State owned Road constructed to dedicable standards. It has an approximate 32-foot wide pavement with 7-foot wide concrete sidewalks all within an approximate 50-foot right-of-way. Although the property's eastern boundary borders Māmalahoa Highway, no access is permitted from the highway to the subject property. There is a signalized intersection at the intersection of Māmalahoa Highway and Onouli Road.

A Traffic Impact Analysis Report (TIAR) was conducted by Wilson Okamoto Corporation for the proposed project. The report concluded that the new facility is expected to generate a minimal volume of traffic during the AM and PM commuter peak periods since most of the functions at the facility are expected to occur on Sunday when traffic volumes along the adjacent roadways are significantly less. As such, with the implementation of the aforementioned recommendations, the new facility is not expected to have a significant impact on traffic operations in the vicinity. The Department of Public Works requested that the applicant should be required to implement the recommendations within the TIAR. A condition of approval will be added to require that applicant to incorporate the recommendations within the TIAR for the project.

Water will be provided by a 12-inch main along Onouli Road via a new water service lateral. Wastewater disposal will comply with Department of Health regulations via a new onsite Individual Wastewater System (IWS) as a municipal sewer system is not available in the vicinity of the property. Lastly, electrical and telephone service are available to the property.

Based on the above discussion, the requested use will not burden public agencies to provide additional services.

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

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Although the soil within the project area are suitable for pasture, coffee and other agriculture uses, the fact that the topography is relatively steep

for most cultivated crops, agricultural endeavors have not been promoted other than pasture grazing. Additionally, only half of the property can be utilized for agricultural purposes as the other half is zoned for urban uses. Based on the limitations of the property relating to the topography and zoning, it is recommended that the proposed Special Permit request be approved.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed use will alter the character of the land, but it will not be a substantial change. The proposed meeting house (church) will be developed is in harmony with the existing rural character of the neighborhood.

The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is located in area identified as Low Density Urban in the General Plan. Low Density Urban allows for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; with an overall residential density that may be up to six units per acre. The request is not contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and complements the Land Use and Economic elements of the General Plan.

The property is located within the South Kona Rural Town TOD within the Kona Community Development Plan. The Plan directs growth in the area to the Rural TOD.

Therefore, the proposed request is not contrary to the General Plan and the Kona Community Development Plan.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawai'i Revised Statutes, relating to the Coastal Zone Management Program. The property is not located within the Special Management Area and is nearly 2 miles from the nearest coastline. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights

must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

- Investigation of valued resources: The applicant submitted an Archaeological Inventory Survey (AIS) conducted by Scientific Consultant Services, Inc, in December 2009 of the subject property.
- The valued cultural, historical, and natural resources found in the permit area: The AIS report identified five (5) sites, comprised of eleven (11) features including six (6) earthen agricultural walls, a habitation enclosure, a ranch wall, a possible animal pen, and a modern trash deposit. Two (2) of the sites were associated with pre-contact era agriculture and habitation. The remaining three (3) sites were associated with historic-era cattle ranching activities. The recommendation from the consultant was that no further work should be done for any of the sites within the property. The report was submitted to the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) for review in March 2010, in which SHPD has not responded as of the date of this writing.
- Possible adverse effect or impairment of valued resources: Native plants may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.
- Feasible actions to protect native Hawaiian rights: No gathering is taking place on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. A condition of approval will be added requiring the applicant to comply with the recommendations from the DLNR-SHPD for the AIS.

Based on the above considerations, the approval of the request would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of the Special Permit is subject to the following conditions.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. The proposed use shall be conducted in a manner that is substantially representative of plans and details contained within the Application for Special Permit and Use Permit (Planning Department Exhibit 1) and the representations made before the Leeward Planning Commission on July 21, 2011, including access to and from Onouli Road.

3. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations for the proposed improvements prepared by a professional engineer in the State of Hawai'i, for review and approval, and a water commitment deposit in accordance with the "Water

Commitment Guidelines Policy" to the Department of Water Supply within one hundred and eighty days from the effective date of this permit.

4. The applicant shall install a reduced pressure type backflow prevention assembly, which must be inspected and approved by the Department of Water Supply.

5. Construction of the proposed meeting house and related improvements shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and paved parking stalls. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Landscaping shall conform to the standards for separation of a RS (Single-Family Residential) zone from a CN (Neighborhood Commercial) zone as provided for in Planning Department Rule No. 17, in particular, Section 17-6(b) for the side yard landscaping requirements along the RS-15-zoned portion of Parcel 45 and Sections 17-6(c) and (d) for the front yard landscaping requirement along the Māmalahoa Highway and Onouli Road and parking lot landscaping requirements, respectively.

6. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting with the approval of the Department of Public Works, prior to the submittal of plans for plan approval review.

7. Should any improvements or land alteration be proposed within the designated flood zone area, the applicant shall comply with the requirements of Chapter 27 – Flood Plain Management, of the Hawai'i County Code and approval of the Department of Public Works.

8. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.

9. Driveway connections to Onouli Road including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works and/or the Department of Land Natural Resources.

10. The applicant shall to incorporate the six (6) recommendations listed on Page 16 within the TIAR dated July 2010 for the project, prior to issuance of Certificate of Occupancy.

11. Prior to the submittal of plans for plan approval review, the applicant shall receive approval of the Archaeological Inventory Survey (AIS) for the project from the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD). The applicant shall comply with the any recommendations of the DLNR-SHPD after review of the AIS and submit evidence of compliance to the Planning Department.

12. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

13. If the applicant fails to comply with the conditions of approval or causes complaint(s) relating to any interference or nuisance and is unable to resolve them with the surrounding community, the Planning Director shall investigate and, if necessary, suspend the permit. The Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicants fail to comply with the conditions of approval or has caused any unreasonable interference or nuisance on the surrounding community, the permit may be revoked.

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

    A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.

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

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

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

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

Use Permit

The applicant is requesting a Use Permit to allow the construction and establishment of a "meeting house" (church) and related improvements on 5.273 acres of land of which 2.421 acres is situated within the County's Single-Family Residential 15,000 square foot (RS-15) district and the State Land Use Urban district. The meeting house will allow for Sunday services, weekday services and social activities, and weekend events. The meeting house will accommodate as many as three (3) congregations, which are known as Wards. The proposed improvements will include:

- Meeting house (17,247 square-foot, one-story structure).
- Storage building (168 square-foot, one-story structure).
- Parking, perimeter fencing and landscaping.

The operations will consist of the following activities:

- Sunday services: Services for as many as three (3) Wards, which will be held during three-hour blocks at alternating times. Each Ward will meet during a three-hour block of time with the possibility of some overlap between Ward services. The maximum amount of patrons with the overlapping services would not exceed 350 persons.
- Weekday nights: Each Ward will use the building one night a week services from Tuesday through Thursday from 7 p.m. to 9 p.m. with an average of 20 to 50 persons with an occasional attendance of 150 persons Other groups may utilize the facility during weeknights such as the Cub Scouts, Boy Scouts, etc.
- Weekday days: Activities would include Cub and Boy Scout meetings, socials, fellowship, sports activities, spiritual lessons, etc., which will be minimal and will average approximately 20 to 40 persons.
- Weekends: Occasional Friday and Saturday events may include social or spiritual gathering including youth dances, meetings, wedding receptions, birthday and graduation parties, baptisms, holiday gatherings, etc. Weekend gatherings or meetings typically range in size from approximately 20 to 150 persons with occasional attendance of approximately 350 persons.

Rule 7 (Use Permits) of the Planning Commission's Rules of Practice and Procedure states that the Planning Commission may approve a Use Permit based on the certain criteria. Section 7-6, Criteria for Granting a Use Permit, states:

"The Commission may approve a Use Permit upon finding that:

(a) The granting of the proposed use shall be consistent with the general purpose of the zoning 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, sewer, water, drainage, schools, police and fire protection and other related infrastructure."

The proposed use in the State Land Use Urban district and Single-Family Residential 15,000 square feet (RS-15) zoned district may be allowed through the granting of a Use Permit. 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 the goals and policies of the General Plan. The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the location and use of buildings, off-street parking, the percentage of lots that may be occupied, the density of population and land for trade, industry, residence or other purposes.

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan. According to the Zoning Code, the RS (single-family residential) district provides for lower or low and medium density residential use, for urban and suburban family life. It applies to areas having facilities, and to carry out the above stated purpose. The Zoning Code allows for churches to be a permitted use within the County's Single Family Residential zoned district if a Use Permit is approved by the Planning Commission. 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.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The project site is located in area identified as Low Density Urban in the General Plan. Low Density Urban allows for single family residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; with an overall residential density that may be up

to six units per acre. The request is not contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and complements the Land Use and Economic elements of the General Plan.

Based on the above, the request is consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County 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 property is located at the northwest corner of the intersection of Hawai'i Belt Road (Māmalahoa Highway) and Onouli Road. The property is split zoned with 2.852 acres situated within the State Land Use Agricultural district and the County's Agricultural (A-5a) zoned district, and 2.421 acres situated within the State Land Use Urban district and the County's Single Family Residential (RS-15) zoned district. The parcel is currently vacant is uses and structures.

The proposed church meeting house will enhance the religious and charitable services of the community. The church will offer regular spiritual services, classes and guidance to the surrounding community. Additionally, the welfare program of the church will care for the needy while teaching principles that will allow needy persons to become self-reliant and retain their self-respect.

The property is situated in a manner that will minimize adverse noise and visual impacts to the surrounding properties. The property is buffered by the Hawai'i Belt Road to the east, Onouli Road to the south, and Konawaena Elementary School to the west. The nearest single family dwelling is located on the approximate 40-acre property to the north. The meeting house will meet the required setbacks and required landscaping through the Plan Approval process to further minimize any adverse noise and visual impacts that may be generated by the proposed request. All of the proposed activities will occur during off-peak traffic periods and the applicant will be providing sufficient on-site parking. In addition, the Planning Department received no objections or concerns from the community.

Based on the above discussion, it is determined that 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. In addition, the Planning Department received no objections or concerns from the community.

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. Access to the project site is from Onouli Road, which is a State owned Road constructed to dedicable standards. It has an

approximate 32-foot wide pavement with 7-foot wide concrete sidewalks all within an approximate 50-foot right-of-way. Although the property's eastern boundary borders Māmalahoa Highway, no access is permitted from the highway to the subject property. There is a signalized intersection at the intersection of Māmalahoa Highway and Onouli Road.

A Traffic Impact Analysis Report (TIAR) was conducted by Wilson Okamoto Corporation for the proposed project. The report concluded that the new facility is expected to generate a minimal volume of traffic during the AM and PM commuter peak periods since most of the functions at the facility are expected to occur on Sunday when traffic volumes along the adjacent roadways are significantly less. As such, with the implementation of the aforementioned recommendations, the new facility is not expected to have a significant impact on traffic operations in the vicinity. The Department of Public Works requested that the applicant should be required to implement the recommendations within the TIAR. A condition of approval will be added to require that applicant to incorporate the recommendations within the TIAR for the project.

Water will be provided by a 12-inch main along Onouli Road via a new water service lateral. Wastewater disposal will comply with Department of Health regulations via a new onsite Individual Wastewater System (IWS) as a municipal sewer system is not available in the vicinity of the property. Lastly, electrical and telephone service are available to the property.

Based on the above discussion, the requested use will not burden public agencies to provide additional services.

In addition to the criteria for granting a Use Permit, the request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Area. The property is not located within the Special Management Area and is nearly 2 miles from the nearest coastline. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

- Investigation of valued resources: The applicant submitted an Archaeological Inventory Survey (AIS) conducted by Scientific Consultant Services, Inc, in December 2009 of the subject property.
- The valued cultural, historical, and natural resources found in the permit area: The AIS report identified five (5) sites, comprised of eleven (11) features including six (6) earthen agricultural walls, a habitation enclosure, a ranch wall, a possible animal pen, and a modern trash deposit. Two (2) of the sites were associated with pre-contact era agriculture and habitation. The remaining three (3) sites were associated with historic-era cattle ranching activities. The recommendation from the consultant was that no further work should be done for any of the sites within the property. The report was submitted to the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) for review in March 2010, in which SHPD has not responded as of the date of this writing.
- Possible adverse effect or impairment of valued resources: Native plants may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.
- Feasible actions to protect native Hawaiian rights: No gathering is taking place on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. A condition of approval will be added requiring the applicant to comply with the recommendations from the DLNR-SHPD for the AIS.

Based on the above considerations, the Use Permit is approved subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. The proposed use shall be conducted in a manner that is substantially representative of plans and details contained within the Application for Special Permit and Use Permit (Planning Department Exhibit 1) and the representations made before the Leeward Planning Commission on July 21, 2011, including access to and from Onouli Road.

3. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations for the proposed improvements prepared by a professional engineer in the State of Hawai'i, for review and approval, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within one hundred and eighty days from the effective date of this permit.

4. The applicant shall install a reduced pressure type backflow prevention assembly, which must be inspected and approved by the Department of Water Supply.

5. Construction of the proposed meeting house and related improvements shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and paved parking stalls. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Landscaping shall conform to the standards for separation of a RS (Single-Family Residential) zone from a CN (Neighborhood Commercial) zone as provided for in Planning Department Rule No. 17, in particular, Section 17-6(b) for the side yard landscaping requirements along the RS-15-zoned portion of Parcel 45 and Sections 17-6(c) and (d) for the front yard landscaping requirement along the Māmalahoa Highway and Onouli Road and parking lot landscaping requirements, respectively.

6. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting with the approval of the Department of Public Works, prior to the submittal of plans for plan approval review.

7. Should any improvements or land alteration be proposed within the designated flood zone area, the applicant shall comply with the requirements of Chapter 27 – Flood Plain Management, of the Hawai'i County Code and approval of the Department of Public Works.

8. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.

9. Driveway connections to Onouli Road including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works and/or the Department of Land and Natural Resources.

10. The applicant shall to incorporate the six (6) recommendations listed on Page 16 within the TIAR dated July 2010 for the project, prior to issuance of Certificate of Occupancy.

11. Prior to the submittal of plans for plan approval review, the applicant shall receive approval of the Archaeological Inventory Survey (AIS) for the project from the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-

SHPD). The applicant shall comply with the any recommendations of the DLNR-SHPD after review of the AIS and submit evidence of compliance to the Planning Department.

12. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

13. If the applicant fails to comply with the conditions of approval or causes complaint(s) relating to any interference or nuisance and is unable to resolve them with the surrounding community, the Planning Director shall investigate and, if necessary, suspend the permit. The Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicants fail to comply with the conditions of approval or has caused any unreasonable interference or nuisance on the surrounding community, the permit may be revoked.

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

    A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.

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

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

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

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

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

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,

Brandi Beaudet, Acting Chairman
Leeward Planning Commission

Lldsspp11-118use11-025

cc: Mr. Roy Takemoto/PBR Hawai'i
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu
Mr. Gilbert Bailado