Stephen K. Yamashiro
Mayor

County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL
P 364 320 023

January 4, 1996

Mr. Keith Unger
Alii Gardens Marketplace
P.O. Box 181
Honaunau, HI 96726

Dear Mr. Unger:

Use Permit Application (USE 95-9)
Applicant: Alii Gardens Marketplace
Request: Establish an Open-Air Market and Related Improvements
Tax Map Key: 7-5-20:70

The Planning Commission at its duly held public hearing on December 14, 1995, voted to approve the above-referenced application. Use Permit No. 142 is hereby issued to allow the establishment of an open-air market place, parking area and related improvements. The property is located across the entrance to Alii Point Subdivision mauka of Alii Drive between Alii Drive and the proposed Alii Highway, approximately 120 feet northwest of Kahakai Elementary School at Puapuaa 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The proposed use will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan. The establishment of an open-air marketplace on a parcel located within the State Land Use Urban District and the County's Unplanned zoned district may be permitted through the Use Permit review process. 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 General Plan goals and policies. 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.

Although the Kona Regional Plan designates the area for Residential (RES-10), the subject property is situated within the Urban Expansion area of the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The Urban Expansion designation allows for high and medium density uses which include commercial activities provided all applicable goals, policies and standards of the General Plan can be met. Mindful of the type of service the

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applicant will provide to the residents of West Hawaii, the proposed use will compliment the following goals, policies and standards of the Land Use and Commercial Elements of the General Plan:

- 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.
- Provide for commercial developments that maximize convenience to users.
- Commercial facilities shall be developed in areas adequately served by necessary services, such as water, utilities, sewers and transportation systems.
- Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.
- The development of commercial facilities should be designed to fit into the locale with minimal intrusion while providing the desired services. Appropriate infrastructure and design concerns shall be incorporated into the review of such developments.

The proposed use would also conform to the following goals and policies of the Economic Element:

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

The Kona Regional Plan adopted by the Planning Commission in 1984 is intended to provide short and middle range implementation strategies for the goals, policies and land use pattern presented in the General Plan. The Kona Regional Plan and its Zone Guide Map, adopted over 10 years ago, suggested a Residential (RES-10) designation for the project site, and recognized the need for interim village and neighborhood commercial uses for the project site. The property is situated midway between the urban/retail/employment centers of Kailua Village and Keauhou, and the proposed use will support diversification of the economic base for the County. Approval of the subject request would be consistent with the policy direction established by the General Plan.

The desired use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or surrounding properties. The lands surrounding the subject parcel are currently vacant. The Alii Gardens Marketplace will be contained within the boundaries of the subject parcel with visual and noise impacts buffered by means of landscaping zones along the parcel boundaries. The view onto the subject parcel from surrounding uses/properties in the area will be screened by the trees

which will be incorporated into the landscaping. All parking for customers and vendors will be off-street and parking activities will likewise be screened by the surrounding landscape buffer. Due to the undeveloped nature of the subject property and the immediate vacant surrounding areas, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the project site, nor has the area been identified as a significant botanical or biological habitat.

The proposed use will not substantially alter or change the essential character of the land. The rock wall fronting Alii Drive will be preserved except at the proposed driveway entrance where a new rock wall will be constructed along either side of the driveway. This will maintain the present character along either side of the driveway which is the most visible boundary of the project. The extensive use of landscaping within the kiosk and umbrella area and along the parcel boundaries ensures the project will be harmonious with the existing conditions. The existing topography will be preserved where possible and a minimum amount of grading is planned for the project.

The proposed use will not adversely affect similar or related existing uses within the surrounding area, community or region. The number of small farmers, vendors and craftspeople in and around the Kona area who need a facility as Alii Gardens Marketplace to offer their goods and produce for sale has grown considerably and continues to grow. This facility will encourage local commerce and create additional outlets for locally produced goods. The project location, midway between Kailua and Keauhou, is ideally situated for vendors and customers from both North and South Kona. The concept of an open air marketplace where small businesses can operate independently with low overhead, yet with the benefit of an organized, centrally controlled facility equipped with basic infrastructure has proven to be a commercial success benefitting both sellers and consumers. The advent of large warehouse type retail outlets that stock their shelves with discounted goods from off island has deprived may of the smaller local merchants and vendors of suitable venues to offer their locally produced goods for sale. Alii Gardens Marketplace will provide such a venue for the economic community.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure. The project site is located within an area adequately served with essential services and facilities such as water, transportation systems, and other utilities. According to Department of Public Works, the proposed project will have a moderately negative effect on the Alii Drive/Royal Poinciana Drive intersection. Proper layout design of the parking lot, sight distances and driveway entrance will ensure safe ingress and egress to the project site while minimizing congestion associated with turning movements on Alii Drive. The traffic increase associated with the project will moderately affect traffic along Alii Drive. A bike lane exists along Alii Drive fronting the subject property. In order to ensure the safety of bicyclists as well as pedestrians, the Department of Public Works stated that the applicant should extend the paved shoulders to the Alii Drive right-of-way and along the entire frontage of the property. A condition of approval will be included to ensure the public safety. Water is readily available from existing utilities. Improvements to existing utilities are necessary for the project and will be provided by the applicant. Police and fire protection services are provided by existing facilities and manpower. According to the Department of Public Works, the applicant should install sewer lines to tie in with the Alii Drive Interceptor Sewer which is currently under construction. A condition of approval will

be included that the applicant hook up to the County's sewer system when in operation. In the interim, wastewater generated from the proposed development should be treated and disposed of in accordance with the regulations of the State Department of Health.

Approval of this request 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 applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of the permit.

3. The applicant, its successors or assigns shall be responsible for complying with all conditions of the Special Management Area Use Permit which allowed the proposed development.

4. Final Plan Approval for the proposed improvements shall be secured from the Planning Department in accordance with Chapter 25-243 of the Zoning Code. Plans shall identify the proposed structures, vehicular traffic, paved driveway access and parking stalls associated with the proposed use. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. Landscaping along the project site's boundaries shall be provided to the extent that a continuous, unbroken, heavy planting screen, no less than 5 feet in height, is established prior to the issuance of a certificate of occupancy.

5. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit.

6. Access, roadway and any drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works. In order to ensure the safety of bicyclists and pedestrians, the applicant shall extend the paved shoulders to the Alii Drive right-of-way and along the entire frontage of the property meeting with the approval of the Department of Public Works. All these improvements shall be completed prior to the issuance of a certificate of occupancy.

7. Sewer lines shall be constructed, to hook up to the Alii Drive Interceptor Sewer, in a manner meeting with the approval of the Department of Public Works and prior to the issuance of a certificate of occupancy. In the interim, wastewater generated by the proposed development shall be disposed of in a manner meeting with the approval of the Department of Health or Department of Public Works, whichever is applicable.

8. A Data Recovery Plan and Preservation Plan shall be prepared for the review and approval of the State Department of Land and Natural Resources-Historic Preservation Division. Proposed mitigation treatment (preservation in place or disinternment/reinternment) for burial sites must be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans

are finalized for these sites. A copy of the approved Final Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for plan approval review and prior to any approval for any land alteration permits.

9. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

10. A Solid Waste Management Plan for the development shall be prepared meeting with the approval of the Department of Public Works prior to issuance of a certificate of occupancy for any portion of the project. The Plan shall include, but not be limited to, the management of solid waste generated from the construction and operating phase(s) of the proposed development. Approved recommendations and mitigation measures shall be implemented at a time and in a manner meeting with the approval of the Department of Public Works. A copy of the approved Plan shall be submitted to the Planning Department for its files.

11. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with, and a detailed listing of public complaints or problems and their disposition. 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 or remedial effort, 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. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

12. The applicant, its successors or assigns shall be responsible for complying with the following conditions:

    A. The marketplace will be open to the public no earlier than 8:00 a.m. and will close no later than 5:00 p.m. Vendors will be allowed to enter the property no earlier than 7:00 a.m. and all vendors will be required to leave the property no later than 6:30 p.m. Applicants agree that there will be no market operations, events, performances or activities held after sunset and before sunrise.

    B. Applicants will ensure that all solid waste materials will be removed from the property on a daily basis and enforce rules prohibiting vendors from using trash facilities located on nearby properties.

C. Applicants will pave all areas required by the Planning Department. All other areas of vehicular parking and travel shall be surfaced with a dust-free material.

D. Applicant will limit Alii Drive frontage signage to two signs, each no larger than the maximum allowable size per County of Hawaii regulations. One sign will be located at each corner of the property which fronts on Alii Drive. Signs will be of permanent construction, will be constructed of wood or metal, will be of a character consistent with a high quality, Polynesian market and will conform with County sign ordinances. Applicant will not use, nor allow any vendor to use, banners, sandwich signs, signboards, flags, balloons, inflatable signs or features, temporary signs or the like.

E. Applicant will develop Polynesian-designed, thatched kiosks as sales areas. No umbrellas, tarps, awnings, tents, or other temporary shelters or display areas will be permitted except that up to 20 green or earth-tone colored umbrellas may be used in place of the kiosks during the first twelve months of operation.

F. Applicant will assign the kiosks or sales display areas nearest to Alii Drive to local artisans and crafts persons selling high quality, handmade products. Applicant will assign the kiosks or sales display areas furthest away from Alii Drive to sellers of imported merchandise and/or previously owned merchandise. Applicant shall strive to attract vendors selling a high quality product and shall insure that all vendors comply with project rules and regulations. At no time will more than one half of the vendors on site be selling primarily imported or previously owned merchandise.

G. Applicant will not use or permit any vendor, employee or other user of the marketplace to use, play or perform amplified music, including radios, cassette or CD players or car stereo systems.

H. Applicant will institute measures to reduce noise, fugitive dust and traffic problems during construction and operation of facilities on the property.

I. Applicant will provide adequate parking on the property and will prohibit vendors and patrons from parking on Alii Drive. Applicant will recommend and support designation of both mauka and makai portions of Alii Drive as no-parking zones for 500' on both north and south sides of the entrance(s) to the marketplace. Applicant will cooperate in encouraging patrons and vendors to comply with the no-parking restriction including hiring off-duty police officers, if necessary, to control traffic and parking along Alii Drive.

J. Applicant will have a designated manager on the property and on duty during all hours of operation of the marketplace. The name and phone number of the designated manager will be provided to all property owners within 300 feet of the property.

K. Applicant will develop a landscape buffer between the parking and sales areas of the marketplace and Alii Drive, which will include a hedge, shade trees and lawn. Applicant will make reasonable efforts to screen sales areas from nearby residences.

L. Applicant will request that the State and County permit access from the property to the proposed Alii Highway. If access is permitted, applicant will encourage patrons and require vendors to use Alii Highway for access to the marketplace. Applicant will design and construct its internal traffic circulation pattern in a way that will discourage use of the access road as a connector between Alii Drive and Alii Highway.

M. Applicant will prohibit the possession, consumption, use, or sale of all alcoholic beverages and illegal drugs on the property.

N. Applicant will design and develop drainage and flood control improvements which will prevent surface runoff from the property to enter Alii Drive or any of the private properties makai of Alii Drive in the vicinity of the property.

O. Applicant will utilize environmentally appropriate best management practices in maintaining landscaping and performing pest control on the property.

P. Applicant will comply with all State and County requirements relating to preservation of historical and cultural resources including, but not limited to, appropriate treatment of burial sites on the property.

Q. Applicant will, on an ongoing basis, monitor traffic flow on Alii Drive and assess any impacts the marketplace has on traffic. In the event marketplace-related traffic results in disruption of traffic flow on Alii Drive, applicant will take appropriate measures to mitigate the traffic impact. These mitigation measures will include, but are not limited to, hiring off-duty police officers and/or security guards to direct traffic, adjusting hours of operation or otherwise changing operations, and performance of traffic improvements.

R. Applicant will take appropriate measures to protect the safety and security of property owners near the marketplace. Applicant will prohibit overnight camping on the property and will prohibit vendors from sleeping in vehicles or camping in the surrounding area. Applicant will prohibit pets or animals on the property.

S. Applicant will design and develop a wastewater treatment system to be approved by the State of Hawaii Department of Health and the County of Hawaii. Upon commencement of market operations on the property, no portable toilets will be permitted at any time.

13. An 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 applicant, successors or assigns, and that are not the result of their fault or negligence.

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

Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Planning 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.

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

Sincerely,

Edward E. Crook

Edward E. Crook, Chairman
Planning Commission

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cc: Honorable Stephen K. Yamashiro, Mayor
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Kona
West Hawaii Office
Department of Land and Natural Resources
Department of Health
Reid and Associates