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County of Hawaii

PLANNING DEPARTMENT

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June 15, 2006

Mr. Dave Eadie, CEO
Rutter/K.W. Kohanaiki, LLC
18012 Cowan, Suite 200
Irvine, CA 92614

Dear Mr. Eadie:

PLANNED UNIT DEVELOPMENT PERMIT NO. 06-000002 (PUD-06-000002)

Applicant: Rutter/K.W. Kohanaiki, LLC

Landowner: Kohanaiki Shores, LLC

Project: "The Shores at Kohanaiki"

Location: TMK: 7-3-009: 003; Kohanaiki, North Kona, Hawai'i

After reviewing the information submitted with the Planned Unit Development Application, the Planning Director hereby approves Planned Unit Development Permit No. 06-000002, which allows the development of a master planned community on land consisting of approximately 450 acres. This PUD addresses variances for minimum building site area and widths, roadways improvements, minimum yard setbacks, and lot configuration.

BACKGROUND

Project Location

The subject property (TMK: 7-3-009: 003), hereinafter referred to as "Property", consisting of approximately 450 acres, is located within the district of North Kona, adjacent and to the north of Kaloko Honokohau National Park on the makai side of the Queen Kaahumanu Highway.

Land Use Designations

Hawai'i County is an Equal Opportunity Provider and Employer

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The Property is situated within the State Land Use Urban District and currently designated for Resort, Low Density and Medium Density Urban with a 1,200 to 2,000-foot band of Open along the coastal portion by the County General Plan. The County zoning designation for the entire property is a mix of Resort (V-1.25), Commercial (CV-10), Limited Industrial (ML-10), Multiple Family (RM-3), Single Family (RS-10) and Open (O) designations. The Project, with the approval of this PUD, will be consistent with the requirements of the Zoning Code and the land use policies of the General Plan.

Proposed Development Details

The "Shores at Kohanaiki" is a private residential community of up to 500 homesites/residences that will be situated in and around an 18-hole golf course with lot sizes ranging from about 1/3-acre to one acre in size with primarily one-acre lots to be located nearest to the ocean. The 18-hole championship golf course will include a golf clubhouse along with other ancillary facilities such as tennis courts, residents dining and workout facilities. A 3-acre resident's beach facility will also be constructed. Approximately 109-acres of open space, which includes 6 golf holes, and a coastal community park will be provided for along the coastal area of the property makai of the proposed residential lots.

Compatibility with Neighboring Uses

The Property is situated within a region that is primarily designated for urban uses by both the State Land Use Commission and the County. Less than a mile to the north of the Property is the Kona International Airport, On the mauka side of the Queen Kaahumanu Highway in close proximity are the Kohanaiki Industrial lots and the Kaloko Industrial Subdivision. While the Kaloko Honokohau National Historic Park is located immediately to the south of the Property, the proposed private residential community is not viewed as an incompatible or inappropriate use of lands adjacent to the national park, and provides a transition of land use activities between surrounding industrial uses in proximity to the park site. In fact, the inclusion of a coastal public park along the shoreline of this Project will compliment the adjoining national park.

Related Major Approvals

1987 to 1988 – In 1987, the State Land Use Commission approved a State Land Use Boundary Amendment from Conservation to Urban to accommodate a proposal for 2 hotels, a marina, commercial area, golf course and residential development on the Property. In 1987, the County approved a General Plan amendment and in 1988, also approved a change of zone of the Property to its current zone district classifications.

November 1990 – Then applicant and landowner Nansay Hawaii secures a Special Management Area (SMA) Use Permit to allow the 2 hotels, residential development, golf course and commercial uses on the Property, minus the marina which they intended to apply for at a later date. This application was subsequently withdrawn by Nansay after lengthy litigation.

November 7, 2003 – Planning Commission approves Use Permit No. 197 to allow the development of an 18-hole golf course and related improvements on the Property and Special Management Area Use Permit No. 439 to allow the development of the “Shores at Kohanaiki” upon lands situated within the Special Management Area (SMA).

December 23, 2005 – Non-significant Zone Change (NZC-05-000005) approved by the Planning Department to accommodate the adjustment of the zoned district boundaries within the Property.

PROJECT OBJECTIVES AND DESCRIPTION

The objectives for “The Shores at Kohanaiki” (“Project”) include the following:

According to the Applicant “*The purpose of the requested Planned Unit Development Permit “is to allow for more flexibility in the design of the project. This flexibility will allow for the avoidance and preservation of onsite natural and cultural features, as well as providing for a more diverse and varied resort community.”* The Applicant also notes that “*The requested deviations will collectively allow for the establishment of a better balance of the built form, the landscaping, and the natural environment. This will result in a more integrated neighborhood pattern with blended edges, shared recreation, and social gathering areas. This integration will also provide for a higher level of street character and visual interest. Combined, these elements will create a highly desirable built environment that is harmonious and compatible with the natural surrounding area and resources.*”

AGENCIES’ REVIEW

Department of Public Works: Memorandum dated June 1, 2006

“BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction.

ROADWAYS

1. The applicant shall plan and construct all roadways in accordance with the Ord. 88-159 or successor ordinance. The roadway connection to the north as shown in the application may not satisfy the intent of Ordinance 88-159 Condition H. Connecting roadways to adjoining parcels should be constructed to dedicable standards and dedicated to the County or be open to public traffic. A dedicable turnaround shall be provided on the County road side of any vehicular security gate.
2. All streets within the proposed development shall follow the guidelines incorporated in the Hawaii Statewide Uniform Design Manual for Streets and Highways or AASHTO and the requirements of DPW for the designated appropriate design speed.
3. Drainage facilities should be designed in conformance with the County of Hawaii Storm Drainage Standard.
4. Concrete curbs, gutters, and sidewalks should be required in areas of pedestrian traffic (see Ord. 88-159. Condition G).
5. We note that the public access Coastal Drive is not specifically included in the list of facilities affected and we assume no variance is being sought.

TRAFFIC

Currently, street lights, signs and markings for private roads will not be reviewed by our Traffic Division.”

Fire Department: Memorandum dated May 19, 2006

Fire Department recommends that fire apparatus access roads comply with Uniform Fire Code (UFC) Section 10.207.

Police Department: Memorandum dated May 12, 2006

Recommends that until adequate roads are built to support the ever-growing population, construction and additional vehicles on the road, development must conform to the County's proposed policy on the principle of concurrency.

Police staff also noted “significant” concerns dealing with ingress and egress to this proposed subdivision from the Queen Kaahumanu Highway and recommends a grade-separated intersection. Also recommends that Applicant construct a road to adjoining properties to the north and south to avoid another “stand-alone cul-de-sac subdivision”.

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Department of Environmental Management: Memorandum dated May 4, 2006

DEM states that the Applicant plans to connect to the County's sewer system. The County currently has plans to install a sewer line within the Queen Kaahumanu Highway that will send wastewater to the Kealakehe Wastewater Treatment Plant located 3.5 miles south of the Property. DEM is recommending that the Applicant prepare a solid waste management plan.

Department of Water Supply: Memorandum dated May 8, 2006

DWS confirms that water to support the proposed Project is available subject to the Applicant complying with the requirements of an Agreement between the applicant and the Department of Water Supply and with the construction of necessary water system improvements and the payment of required water facilities charges.

Hawaii Electric Light Company (HELCO): Letter dated May 18, 2006

HELCO requires various system improvements in order to support the proposed Project, including a new distribution transformer and switchgear at the HOST Park substation and new 12.47KV distribution lines and two 12.47KV circuits. HELCO also recommends energy efficient and conservation features be made a part of the development, including waste heat recovery equipment for air conditioning and refrigeration equipment. HELCO asks that Applicant contact their Engineering Department as soon as practicable to open a service request to insure timely procurement of long lead equipment.

APPROVED VARIANCES

The following variances are hereby approved:

Variances to the Zoning Code

- **Minimum Building Site Area** (Hawaii County Code §25-4-32(a)). As detailed further below, this approved variance will allow for the reduction of the minimum building site area below the specified zone district requirements.
- **Minimum Building Site Area** (Hawaii County Code §25-5-5, §25-5-34, §25-5-94, §25-5-124). This approved variance will allow for a minimum lot size of 6,000 square feet in lieu of the minimum 7,500 square foot lot size permitted the Resort (V) and Multiple Family Residential (RM) zoned districts and the minimum 10,000 square foot lot size required in the Village Commercial (CV) and Single Family Residential (RS) zoned districts. These smaller lots will be located within development "pods" located within the mauka half of the Property closer to the Queen Kaahumanu Highway.

- **Minimum Building Site Average Width** (Hawaii County Code §25-5-6, §25-5-35, §25-5-95, §25-5-125). For those lots less than 7,500 square feet to as small as 6,000 square feet as permitted above, this variance will allow for a minimum building site average width of 50 feet in lieu of the minimum 60 feet and 70 feet, depending on this zone district classification.
- **Minimum Building Site Average Width (RS)** (Hawaii County Code §25-1-5 & §25-5-6). Applicant requests that the minimum building site average width of 70 feet for lots within the RS-10 zoned district be measured at the mid-point of the side lot lines to allow for the creation of “pie-shaped lots” around the cul-de-sac and knuckles. This PUD will also grant relief from the method of determining building site average width as defined by the Zoning Code.
The Applicant also wishes to exclude the land area within easements, preservation areas or slopes (“unbuildable areas”) from being calculated against the side yard setback requirements. The Applicant is mistaken in their interpretation of yard setback application. The Zoning Code defines minimum yard setbacks as a set distance based on zoning. Minimum yard setbacks are not variable based on the size of an actual lot. As an example, portion of the Project with a zoning of RS-10 will have a minimum yard setback of 20 feet from the front and rear property lines and 10 feet from the side property lines. These setbacks will not increase as the parcel size increases beyond the required minimum 10,000 square feet minimum lot size.
- **Minimum Yards** (Hawaii County Code §25-5-7, §25-5-36, §25-5-96, §25-5-126). This approved variance will allow for zero lot lines in certain instances where there will be back-to-back units on two abutting lots. This zero lot line condition will only apply to that property boundary straddled by the two abutting residential units. The required minimum yard setbacks consistent with the applicable zone district requirements shall be applied to all other property boundaries. This variance is approved with the understanding that a minimum 20-foot structural setback between detached residential units will be maintained.

Variations to the Subdivision Code

- **Minimum Right-of-Way and Pavement Widths** (Hawaii County Code §23-41(a)). The Applicant is requesting a variance from the minimum rights-of-way widths for its internal, collector-type roadway known as the Loop Road, Lot A. In lieu of the minimum 24-foot wide pavement within a 60-foot wide right-of-way required for collector streets, the Applicant is requesting that Loop Road be constructed with a 20-foot wide pavement within a 50-foot wide right-of-way. Applicant justifies this request due to the lower average daily trips expected within this private community as well as reduce the amount of impervious surfaces, which will aid the Applicant in meeting its water quality goals.

This variance will also permit the use of mid-block islands and landscaped medians that will create a more desirable streetscape and driving experience. Each travel lane, however, must be at least 10 feet wide, so additional right-of-way may be needed to accommodate these landscape features.

This variance excludes the coastal drive, portions of which will be situated within an approximately 32-foot wide road lot with the remaining coastal portion to be situated within a bulk lot. A possible option is to retain both lots as a single large flag lot with access to the proposed public coastal park. The Applicant should begin its consultation with both Planning and the Department of Public Works regarding the anticipated improvements necessary to provide access to the coastal public park.

Curb, gutters and sidewalks within subdivision roadways may be required in areas of likely pedestrian traffic as determined by the Department of Public Works and in accordance with Change of Zone Ordinance No. 88-159.

- **Cul-de-sac** (Hawaii County Code §23-50). Applicant requests a variance to allow its project cul-de-sacs to exceed the maximum length of 600 feet and service more than 18 lots. This variance is approved based on street design integration with the natural environment and topography. This PUD will establish a maximum 3,800-foot length and a maximum of 42 lots along a cul-de-sac.
- **Grades and curves** (Hawaii County Code §23-50). Applicant requests a variance from the minimum requirements for vertical and horizontal curves for its various proposed private roadways within the subdivision. This variance is approved on the basis of topography to minimize the grading requirements and to retain as much of the natural terrain as practical. *In those instances where the vertical or horizontal curves do not meet the minimum requirements, the Applicant shall present alternate standards at the time of construction plan review, as provided for in §23-50(b), with lower design speeds assigned in order to meet the roadway safety standards as specified within the AASHTO Policy on Geometric Design of Highways and Streets, 2001.*
- **Right of way Improvement** (Hawaii County Code §23-95). This variance approval would allow for deviation from the County's standard detail regarding the minimum edge of pavement radius with no sidewalk of 30 feet. *The Applicant will be required to present alternative standards at the time of construction plan review and demonstrate that a reduced pavement radius within the cul-de-sac will conform to AASHTO Policy on Geometric Design of Highways and Streets, 2001 or other accepted national design standards.*

DENIED VARIANCES

- **Elimination of Tangents between reversing curves and broken-back curves.** There is no such requirement within either the Zoning or Subdivision Codes that require a tangent between reversing or broken-back curves. We believe that this design element resides in national roadway design guidelines like AASHTO. Therefore, no variance is required. However, the Applicant should work closely with the Department of Public Works to determine whether such a deviation from design standards principles will be acceptable.
- **Through Lots** (Hawaii County Code §23-36). Through lots may be permitted, at the discretion of the Director, due to topographic constraints that are demonstrated. Since the Director has this discretion, no variance is required.

FINDINGS

The following findings are made in accordance with Section 25-6-10 (Criteria for granting a PUD):

- 1) **The construction of the project shall begin within a reasonable period of time from the date of full approval and shall be completed within a reasonable period of time.**

The Applicant is ready to start development as soon as approvals are issued, with infrastructural improvements and basic grading done within 2 years from the approval of infrastructural construction drawings. Vertical construction of the homes and duplexes are anticipated to achieve full build-out within approximately 5 years thereafter. The Applicant anticipates that the coastal public park will be completed commensurate with the completion of the subdivision's infrastructural improvements.

- 2) **The proposed development substantially conforms to the General Plan.**

The proposed agricultural lots are consistent with the General Plan LUPAG Map designation for the Property of Resort, Low & Medium Density Urban with a strip of Open along the coastline. This proposed private residential community is consistent with the General Plan Land Use and Housing goals and policies by providing a diversity of housing choices to meet a range of housing needs and designing in accordance with the environment.

- 3) The proposed development shall constitute an environment of sustained desirability and stability, shall be in harmony with the character of the surrounding neighborhood and shall result in an intensity of land utilization no higher than, and standards of open space at least as high as permitted or as otherwise specified for the district in which this development occurs.**

The proposed 500-unit private residential subdivision will provide a density that is less than the overall density permitted by its combination of single family and multiple family zoning, which alone would accommodate a roughly-calculated 1,000 units. While the Property is relatively flat when compared with the mauka section of North Kona, the Applicant is working to align the subdivision roadways to follow the existing grades and minimize grading. Approval of this PUD will provide the Applicant with opportunities to align and narrow the roadways and to adjust and configure individual lots to take the best advantage of the physical attributes of the Property and integrate its design into the natural environment.

- 4) The development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of the Zoning and Subdivision Codes, and that the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.**

In order to best meet the unique physical attributes of the Property, variances to the minimum building site area, building site average width, minimum yards, roadway improvements and other variances from lot configuration requirements will allow the Applicant to integrate the project into the natural landscape as much as possible as well as create visual interest as its future residents ride or walk along the subdivision roadways. Current code requirements are universal with little regard to topography and site limitations. Roadway improvements are designed for durability and standard design speeds. The street design variances result in the desire to enhance the streetscape by providing unique visual elements such as a more-narrow pavement section, mid-block island and landscaped medians. As a private roadway, a community association or the developer will assume maintenance responsibility of the landscaped areas located within the right-of-way.

CONDITIONS OF APPROVAL

The Planning Director approves this Planned Unit Development Permit subject to the following conditions:

1. *Permit Runs with the Land.* The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

2. *Indemnification.* The applicant 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 this permit.
3. *Master Plan and Street Layout.* The proposed Planned Unit Development shall be developed in a manner as substantially represented within exhibits submitted as part of this Planned Unit Development Permit.
4. *Roadway design guidelines.* All roadways within the Project shall follow the guidelines incorporated in the Hawaii Statewide Uniform Design Manual for Streets and Highways or the applicable AASHTO design guide for the appropriate design speed.
5. *Construction Plan Review by Fire Department.* The Applicant shall consult with the Fire Department to ensure its conformance with the minimum requirements of the Fire Code. Besides the Department of Public Works and Department of Water Supply, construction plans shall also be submitted to the Fire Department for review.
6. *Compliance with other rules and conditions.* The applicant shall comply with all other applicable rules, regulations and requirements. Other applicable conditions set forth under the "Approved Variances" section of this letter are incorporated herein as conditions of approval. The applicant shall also comply with the requirements of Change of Zone Ordinance No. 88-159 and SMA Use Permit No. 439.
7. *Annual Report.* An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the Planned Unit Development (PUD) 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. This condition shall remain in effect until all of the conditions of approval have been complied with and/or the Planning Director acknowledges that further reports are not required.
8. *Time Extension.* If the applicant should require an extension of time, the applicant may request for time extension pursuant to Section 25-6-14 (Time extensions and amendments) of the Zoning Code (Chapter 25, Hawaii County Code).

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Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate the nullification of this Planned Unit Development Permit.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

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xc: Department of Public Works, Building Division
Department of Public Works, Engineering (Hilo and Kona)
Department of Water Supply
Department of Environmental Management
Fire Department
West Hawaii Planning Office