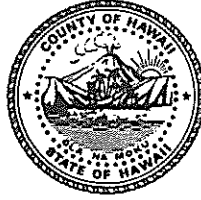


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL

September 22, 1994

Mr. Robert K. U. Kihune, Executive Director
Natural Energy Laboratory of Hawaii Authority
Keahole Point
PO Box 1749
Kailua-Kona, HI 96745

Dear Mr. Kihune:

Amendment to Special Management Area (SMA) Use Permit No. 239
Applicant: Natural Energy Laboratory of Hawaii Authority
Request: Amendment to include Parcel 23 for which same types of
projects are allowable on the rest of the NELH and Host
Park Properties

TMK: 7-3-9:Portion of 5; and 7-3-43:Portion of 3 and 23

⁺²³
The Planning Commission at its duly held public hearing on September 22, 1994, voted to approve your request to amend Special Management Area (SMA) Use Permit No. 239 by adding 83 acres to the area covered by the Permit which allows alternate energy research and development, aquaculture research and commercial aquaculture farms; biotechnology research and commercial development; ocean water related specialty agriculture; and other related projects on the makai side of Queen Kaahumanu Highway to the Keahole Airport, Ooma II, North Kona, Hawaii.

The approval of the amendment to Special Management Area (SMA) Use Permit No. 239 is based on on following findings:

The purpose of Chapter 205-A, Hawaii Revised Statutes, and Rule 9, Special Management Area Rules and Regulations of the County of Hawaii is to preserve, protect, and, where possible, to restore the natural resources of the coastal

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zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

One of the criteria for approving a Special Management Area (SMA) or an amendment thereto is that it is consistent with the General Plan and Zoning Code. Approval of the subject request to allow the inclusion of the project site as part of the overall Natural Energy Laboratory of Hawaii Authority development and the establishment of aquacultural uses as approved under Special Management Area Use Permit No. 239 is consistent with the general purpose of the Zoning Code and the General Plan, provided adequate mitigating conditions are met. Special Management Area Use Permit No. 239 approved the development of the NELHA facilities which consists of a visitors' information center; commercial aquaculture production facilities; commercial research and development activities supported, in part, by University of Hawaii faculty and students; demonstration facilities including alternate energy, ponds, raceways, equipment, etc.; and other incidental and subordinate uses such as restaurant, bakery, or print shop. SMA Use Permit No. 239 also approved the construction of up to 15 cold and warm ocean water intake pipes and associated pump stations/sumps and other related improvements. The project site is designated Conservation by the State Land Use Commission and Industrial by the County's General Plan LUPAG map. Aquaculture and related uses are permitted uses in the Conservation District subject to receiving approval from the Board of Land and Natural Resources. As represented by the applicant, only the proposed lobster farm component of the proposed KAD project will be located within the project site. The visitor's center, Ocean Center and OTEC components of the KAD project will be located on the adjoining NELH-HOST Park lands zoned General Industrial-1 acre (MG-1a). These "urban"-types of uses, as well as the visitor center, restaurant, bakery, gift shops, and demonstration facilities and exhibits as approved under SMA Use Permit No. 239 will be limited to the land area already covered by Special Management Area Use Permit No. 239.

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Approval of the requested amendment to SMA Use Permit No. 239 would be consistent with the following goals, policies and standards of the General Plan:

- o Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- o It shall be the policy of the County to achieve a broader diversification of local industries by providing opportunities for new industries and strengthening existing industries.

Approval of the subject request would also complement the following Courses of Action for the North Kona District:

- o The County, in order to achieve greater diversity and stability of the economy, shall assist in the further development of agriculture, including aquacultural activities, in North Kona. Necessary capital improvements which will aid agriculture, such as water, should be given priority for funding.
- o The County shall continue to encourage development and utilization of by-products from the University of Hawaii's Ocean Thermal Energy Conversion (OTEC) project.

Another criteria in reviewing an SMA Use Permit application is that "The development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not limited to, the potential cumulative impact of individual developments, each of which taken in itself might not have a substantial adverse effect and elimination of planning options." The proposed improvements are not anticipated to create substantial adverse ecological effects to the affected area. No endangered species of flora or fauna were located within the project site nor were any special habitats identified. Air emissions generated during the construction phase can be mitigated by existing construction regulations. Drainage concerns can be controlled by on-site improvements as may be required by the Department of Public Works. There is no existing defined drainage way within the project site.

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Potential on-site runoff/discharge which could reach ocean waters can be handled by existing construction regulations during the construction phase and on-site drainage systems during operations. Wastewater generated by the proposed development will be disposed of within a secondary treatment wastewater treatment facility meeting with the approval of the Department of Health. As recommended by the Department of Public Works, appropriate drainage systems will be required to accommodate runoff generated by the proposed improvements. As required by Condition No. 8 of SMA Use Permit No. 239, the applicant has established the NELHA Cooperative Environmental Monitoring Program (CEMP) which involves monthly water quality monitoring from 16 wells at six locations within the NELH-HOST Park project area. A major focus of the CEMP program has been to document effects and impacts of warm, cold and brackish water discharge on groundwater, anchialine ponds and coastal marine ecosystems. As of March 1992, the CEMP indicated that there were no negative impacts to the environment from these water discharges. The results indicated that neither temperature nor nutrient concentration anomalies were detected. No evidence of change in the benthic community were detected. This monitoring program will continue as part of the applicant's monitoring efforts to ensure that coastal and ground waters are not adversely impacted by the proposed development.

The proposed development will not have an adverse impact to cultural or historical resources within the area. Numerous archaeological surveys over the years have identified 28 archaeological sites within the project site, most of which are located within the coastal portions. These sites consist of habitation complexes, cave shelters, platforms and mounds. Six of these sites are recommended for data recovery and four sites are recommended for preservation. The four sites selected for preservation will be incorporated within a 5-acre Archaeological Preserve. The applicant has been working with the Department of Land and Natural Resources-Historic Preservation Division in the development of a historic preservation mitigation plan as required by Condition No. 5 of SMA Use Permit No. 239 and the establishment of an archaeological preserve. Upon completion of the mitigation plan and data recovery and the establishment of the archaeological preserve, the DLNR-HPD states that the proposed development "will result in a 'no adverse effect' determination."

The proposed development will not adversely affect public access to and along the shoreline or any significant

mauka-makai viewplanes. Condition No. 4 requires that a Shoreline Management Plan be prepared which includes, but not limited to, the provision of a mauka-makai and lateral accesses, restroom facilities and parking areas in up to two locations, signage, and an implementation schedule. This plan shall meet with the approval of the Planning Director to ensure the preservation of lateral and mauka-makai public shoreline access.

Approval of the amendment to Special Management Area (SMA) Use Permit No. 239 is subject to the following (deleted material is bracketted and new material underscored):

1. The permit shall become effective after the accompanying change of zone is adopted.
2. 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 approval of this permit.
- [2]3. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval, including those of the accompanying change of zone.
4. Tax Map Key: 7-3-09: 23, consisting of approximately 83 acres, shall be limited in use to the establishment of aquacultural activities and its related facilities and uses. The applicant shall secure a Conservation District Use Permit (CDUP) from the Board of Land and Natural Resources for and prior to the establishment of any use on TMK: 7-3-09: 23.
- [3]5. Prior to development of any of the proposed lots, plans shall be submitted to the Planning Department for Plan Approval review.
- [4]6. Prior to beginning any development or related activity on the property, a Shoreline Management Plan which includes, but not limited to, the provision of a mauka-makai and lateral accesses, restroom facilities and parking areas in up to two locations, signage, and an implementation schedule shall be submitted for the review and approval of the Planning Director.

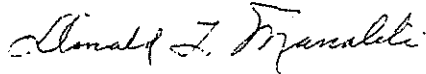
- [5]7. Prior to conducting any development or related activity within the property, archaeological/historic preservation and interpretive management plans for sites proposed for preservation, including the Mamalahoa Trail, and any additional sites designated by the Planning Director for preservation shall be submitted for the review and approval of the Planning Director. Archaeological salvage excavation shall be conducted prior to construction of any sites to remove the scientific information.
- [6]8. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Director notified. No work within the affected area shall resume until clearance is obtained from the Planning Director.
- [7]9. No structural improvements shall be constructed within the 40-foot shoreline setback area unless permitted either by Chapter 205, Part II, Hawaii Revised Statutes, or by an approved Shoreline Setback Variance.
- [8]10. Off-shore water quality monitoring data shall be submitted annually to the Planning Department prior to the anniversary date of the granting of the SMA Use Permit.
- [9]11. All other applicable rules, regulation and requirements shall be complied with.
- [10]12. The Planning Director may administratively grant extensions to any time condition imposed. Further, should any of the foregoing conditions not be met or substantially complied with, the Permit shall be void."

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.

Mr. Robert K. U. Kihune, Executive Director
September 22, 1994
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Should you have any questions, please feel free to contact Rodney Nakano or Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Donald L. Manalili, Chairman
Planning Commission

RKN:jdk
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xc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of State Planning, CZM Program w/background
Department of Land and Natural Resources
Plan Approval Section
Mr. Roy Schaefer, DLNR-OCEA (Fax 587-0390)

CERTIFIED MAIL

June 4, 1986

Mr. William Bass, Jr., Executive Director
High Technology Development Corporation
Central Pacific Plaza
220 South King Street, Suite 252
Honolulu, HI 96813

Dear Mr. Bass:

Change of Zone and Special Management Area
Use Permit Applications
TMK 7-3-09:Por. of 5 and 7-3-43:Por. of 3

The Planning Commission at its duly held public hearing on May 28, 1986 voted to recommend approval to the County Council on the Change of Zone application. The Planning Commission also voted to approve your application, Special Management Area Use Permit No. 239, to allow the development of the Hawaii Ocean Science and Technology (HOST) Park Subdivision and related improvements, including all future improvements and structures at Ooma 1st and 2nd, North Kona, Hawaii.

The approval recommendation for the change of zone application is subject to the following conditions:

- A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Subdivision plans shall be submitted within one year from the effective date of approval of the change of zone. Final subdivision approval shall be secured within one year from the date of receipt of tentative subdivision approval.
- C. An overall landscaping master plan, which includes landscaping along the property's frontages along the Queen Kaahumanu Highway, the main entry road, and the proposed subdivision roads, shall be submitted to the Planning Director for review and approval prior to issuance of final subdivision approval. There also shall be a minimum 100-foot wide landscaping/buffer strip throughout the length of the property's frontage along the Queen Kaahumanu Highway.

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Mr. William Bass, Jr., Executive Director
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- D. A Development Design Manual shall be prepared and submitted for approval by the Planning Director prior to receipt of final subdivision approval. The purpose of the manual is to provide comprehensive design principles and guidelines for the development of the industrial lots in order to achieve a high standard of quality for the development. The manual shall include, but not be limited to, standards and guidelines relative to landscaping, open space, architectural building controls, (appearance, siting, heights, building materials, signs, etc.), setbacks from property lines and buildings, ground cover ratio, etc., and enforcement procedures. No development shall occur on the lots unless it conforms to the standards and guidelines articulated in the Development Design Manual. The Planning Department shall be responsible for the enforcement of the Development Design Manual.
- E. With the exception of the main access road, all accesses shall be from the interior roadway system. Except for the main access road, no direct access from any proposed lots shall be permitted onto the Queen Kaahumanu Highway.
- F. Channelized intersection improvements, including turning and acceleration/deceleration lanes, shall be provided at the intersections of the Queen Kaahumanu Highway and the main access road, meeting with the approval of the State Department of Transportation, Highways Division.
- G. All roadways to be constructed within the proposed subdivision should meet with the approval of the Department of Public Works.
- H. Drainage system(s) shall be installed in accordance with the requirements of the Department of Public Works.
- I. The method of sewage disposal shall meet with the regulations of the appropriate governmental agencies.
- J. The applicant, successors or assigns shall be responsible for satisfying a basic housing requirement by providing or causing the provision of affordable housing units to meet the employee housing impacts generated by the primary industrial development. An affordable housing need study or analysis shall be prepared and submitted to the Planning Director and the Hawaii County Housing Agency estimating the employee housing impact to be generated by primary industrial development on the site. The Planning Director and the Hawaii County Housing Agency may adjust the employee housing requirement based on the findings contained in the report and any other applicable

Mr. William Bass, Jr., Executive Director
June 4, 1986
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information. The manner in which the required affordable employee housing units are to be provided shall meet with the approval of the Planning Director and the concurrence of the Hawaii County Housing Agency. This condition shall be complied with prior to receipt of final subdivision approval.

- K. All other applicable rules, regulations and requirements shall be complied with.

The Planning Director may administratively grant extension to the foregoing time conditions. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.

Approval of Special Management Area Use Permit No. 239 is subject to the following conditions:

1. The permit shall become effective after the accompanying change of zone is adopted.
2. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval, including those of the accompanying change of zone.
3. Prior to development of any of the proposed lots, plans shall be submitted to the Planning Department for Plan Approval review.
4. Prior to beginning any development or related activity on the property, a Shoreline Management Plan which includes, but not limited to, the provision of the mauka-makai and lateral accesses, restroom facilities and parking areas in up to two locations, signage, and an implementation schedule shall be submitted for the review and approval of the Planning Director.
5. Prior to conducting any development or related activity within the property, archaeological/historic preservation and interpretive management plans for sites proposed for preservation, including the Mamalahoa Trail, and any additional sites designated by the Planning Director for preservation shall be submitted for the review and approval of the Planning Director. Archaeological salvage excavation shall be conducted prior to construction of any sites to remove the scientific information.

*1986-1987
conceptual plans*

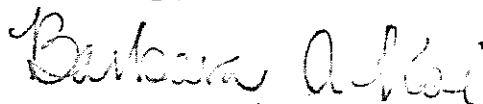
Mr. William Bass, Jr., Executive Director
June 4, 1986
Page 4

6. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Director notified. No work within the affected area shall resume until clearance is obtained from the Planning Director.
7. No structural improvements shall be constructed within the 40-foot shoreline setback area unless permitted either by Chapter 205, Part II, Hawaii Revised Statutes, or by an approved Shoreline Setback Variance.
8. Off-shore water quality monitoring data shall be submitted annually to the Planning Department prior to the anniversary date of the granting of the SMA Use Permit.
9. All other applicable rules, regulation and requirements shall be complied with.
10. The Planning Director may administratively grant extensions to any time condition imposed. Further, should any of the foregoing conditions not be met or substantially complied with, the Permit shall be void.

A requirement, as part of our recommendation to the County Council, is the inclusion of a legal description of the subject area in map and written form by metes and bounds. Please submit such a description to us as soon as possible so that the application can be forwarded to the Council with a minimum of delay.

Should you have any questions regarding the above, please feel free to contact the Planning Department at 961-8288.

Sincerely,



Barbara A. Koi
Chairperson, Planning Commission

cc: Marilyn Metz
Bruce Tsuchiya
DPED, CZM Program w/background
DLNR
Department of Public Works
Department of Water Supply
Hawaii County Services, Deputy Managing Director's Office
County Real Property Tax Division
bcc: Plan Approval Section