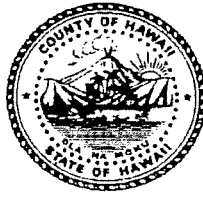


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director



Michael Vitousek, Chair  
Barbara DeFranco, Vice Chair  
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## 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

August 11, 2021

Mr. Sidney Fuke  
Planning Consultant  
101 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

**SUBJECT: Special Management Area Use Permit No. 286 (Docket No. 89-000006)**  
**Applicant: Pacifica Big Island, LLC**  
**Request: Amendment to Condition No. 2 (Time to Secure Final Plan approval)**  
**Tax Map Key: 7-8-010:078 and 090**

The Leeward Planning Commission, at its duly held public hearing on July 15, 2021, voted to approve the above-referenced request for a three-year time extension to Condition No. 2 (Time to Secure Final Plan Approval) of Special Management Area Use Permit (SMA 286), which allows the development of 184 units of multiple-family housing and related improvements on two parcels totaling approximately 24.499 acres of land situated within the Special Management Area. The subject properties are located on the east (mauka) side of the Kamehameha III Road-Ali'i Drive intersection, Kahulu'u and Keauhou 1<sup>st</sup>, North Kona, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Final Plan Approval PLA-08-000376 issued on March 12, 2008 is null and void. Final Plan Approval for Phase II, covered by TMK: 7-8-010:078 and 090, consisting of no more than 184 units, shall be secured from the Planning Department within three years from the effective date of this amendment in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify proposed structure(s), access(es), fire protection

measures, landscaping and security fencing for structures situated less than 75 feet from the Kaulana at Kona project identified by TMK: 7-8-010:092, and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.

3. Construction, which includes site work, for Phase II shall commence within one year from the date of receipt of Final Plan Approval for Phase II as described in Condition 2 and be completed within five years thereafter.
4. The applicant shall submit detailed water usage calculations for the Phase II development, prepared by a professional engineer licensed in the State of Hawai'i, to the Department of Water Supply within 180 days from the effective date of this amendment.
5. Access(es) to the proposed development shall meet with the approval of the Department of Public Works, provided however, that in no event shall the Phase II development take access to Kaluna Street through Phase I – Kaulana at Kona.
6. The applicant shall provide full improvements to the entire frontage along Kamehameha III Road and along the property's frontage with Ali'i Drive between Kamehameha III Road and Kaluna Street consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any relocation of utilities; meeting with the approval of the Department of Public Works prior to issuance of the certificate of occupancy for the proposed units. Install street lights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division. The applicant shall construct all improvements to dedicable standards and dedicate to the County. Said improvements may be deferred until required by the Department of Public Works; provided, however, that a bond or equivalent surety to assure its construction shall be posted with the County.
7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
8. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. The drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to receipt of a Certificate of Occupancy.

9. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
10. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with Department of Health regulations and construction industry standards and practices utilized during construction projects of the State of Hawai'i.
11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
12. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
13. The applicant shall determine the metes and bounds location of the destroyed trail segment (SIHP 4619) on TMK: 7-8-010:078 identified by the Hammatt and Folk (1980) Archaeological Inventory Survey and depict the location on any site plans for Final Plan Approval and subsequent development permits. The applicant shall keep this area free of all structures and improvements until such time as an easement is secured from the State Board of Land and Natural Resources for any proposed use of that land area.
14. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
15. All buildings shall be setback a sufficient distance from the property line fronting Kamehameha III Road so that the buildings do not substantially interfere with or detract from the line of sight toward the sea from the road. The applicant shall provide photo simulations and a view plane analysis with plans for Final Plan Approval showing view planes towards the sea from the road, particularly looking south and southwest, with the proposed buildings.

16. Unless a lesser setback is approved by the Planning Director, all proposed buildings and activity areas (i.e. swimming pools, tennis courts, etc.) shall observe a minimum setback of 200 feet from the center line from the golf course fairway. If deemed necessary, additional setbacks or other mitigating measures, such as additional landscaping along certain portions of the golf course boundaries, may be imposed at the time of Plan Approval review.
17. The highest point of any building that is constructed in the area designated as Area "A" on the diagram, which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall not exceed the elevation above mean sea level of the finished ground floor level of Building 1 of the Kaulana at Kona, Phase I, which building is located as shown on the attached Exhibit "A". The highest point of any building that is constructed in the area designated as Area "B" on the diagram, which is attached hereto as Exhibit "A" and incorporated by this reference, shall not exceed the elevation above mean sea level of the finished floor for the pool deck area of the Kaulana at Kona, Phase I which pool deck is located as shown on the attached Exhibit "A".
18. The applicant shall consult with representatives of Life Care Center to reasonably conserve and protect and mitigate view plane impacts of the ocean and provide the outcome of same to the Planning Director as part of the Plan Approval process.
19. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements.
20. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this amendment. 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 the Planning Director acknowledges that further reports are not required.
21. Should Conditions 2 and 3 not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

*[Note: Ramseyer version available upon request.]*

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. Sidney Fuke  
Planning Consultant  
August 11, 2021  
Page 5

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,

*Michael Vitousek*

Michael Vitousek, Chairman  
Leeward Planning Commission

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Enclosure: PC Findings Report

cc w/enclosure (via USPS): Pacifica Big Island LLC

cc w/enclosure (via email): County Department of Public Works  
County Department of Water Supply  
GIS Section  
Plan Approval Section  
West Hawai'i Division

## PLANNING COMMISSION FINDINGS

### **PACIFICA BIG ISLAND, LLC**

### **AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 286**

Based on the following considerations, the request for a (3)-year time extension to Condition No. 2 (Time to Secure Final Plan Approval) of Special Management Area Use Permit No. 286, which allows the development of 184 units of multiple-family housing and related improvements on two (2) parcels totaling approximately 24.499 acres of land situated within the Special Management Area is hereby approved by the Planning Commission. The subject properties are located on the east (mauka) side of the Kamehameha III Road-Ali'i Drive intersection, Kahulu'u and Keauhou 1st, North Kona, Hawai'i, TMK: 7-8-010:078 and 090.

Please note, at their July 15, 2021 hearing, the Leeward Planning Commission (LPC) voted to add a new condition (Condition No. 18) requiring the applicant to consult with representatives of the Kona Life Care Center to reasonably conserve, protect and mitigate view plane impacts to the ocean to incorporate into plans for Plan Approval, and renumbered the remaining conditions. The LPC also voted to add language to new Condition No. 21 requiring the Planning Director to initiate procedures to revoke SMA Use Permit No. 286, should Condition Nos. 2 & 3 not be complied with in a timely fashion.

The applicant is requesting to amend Condition No. 2 of SMA Permit No. 286 to allow for a three (3) year time extension to secure Final Plan Approval for the proposed multiple-family residential project. Condition No. 2 currently states, "*Final Plan Approval PLA-08-000376 issued on March 12, 2008 is null and void. Final Plan Approval for Phase II, covered by TMK: 7-8-010:078 and 090, consisting of no more than 184 units, shall be secured from the Planning Department within three years from the effective date of this amendment in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify proposed structure(s), access(es), fire protection measures, landscaping and security fencing for structures situated less than 75 feet from the Kaulana at Kona project identified by TMK: 7-8-010:092, and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.*"

The applicant currently plans to develop Phase II of the project within the next five years. Phase II consists of no more than 184 multiple-family housing units within two-and three-story structures on the subject properties (please note, the application inaccurately represents a remaining total of 198 units entitled). Additional improvements would include 414 parking stalls (10 of which would be handicapped stalls), an approximately 1,600 square foot clubhouse, swimming pool, and barbeque or gathering area, landscaping, and on-site infrastructure to support the project (e.g., roadways and utility lines). Should the extension be granted, Condition No. 3 of the subject SMA Permit requires the applicant to commence construction within one year of securing Final Plan Approval and complete construction and be completed within five years thereafter.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, is to preserve, protect, and where possible, to restore the natural resources of the coastal 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. The original application and amendments thereto were reviewed against the guidelines for granting of a Special Management Area Use Permit and were approved by the Planning Commission with conditions. The time extension request is reviewed by the following criteria:

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

**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.** After acquiring the properties in 2014 and amending SMA Permit No. 286 in 2015, the applicant has worked diligently to develop the project. The applicant worked to address archaeological review of the subject properties, secured Final Plan Approval for a 32-unit multiple-family housing project on parcel 90 & the Common Area Clubhouse/Recreation Facility on parcel 78; however, after bids for the development proved too costly, the applicant spent additional time and money to re-think the technical design of the project (specifically grading and building placement) to reduce costs. Shortly after an administrative time extension to secure Final Plan Approval was granted in 2018, the Kilauea eruption suddenly and drastically impacted the housing and development market. Less than two years after the completion of the eruption and just as the financing market was beginning to recover, the COVID-19 pandemic hit resulting in nation and statewide shutdowns, uncertainty in financial markets and drastic increase in the cost of construction. Despite the preceding, the applicant is still committed to completing the project and wishes to retain the appropriate land use entitlement (in this case, the SMA Permit) that would enable it to construct the Phase II of the project, which would require the requested time extension.

Based on the preceding, the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants and that are not the result of their fault or negligence.

**Granting of the time extension would not be contrary to the General Plan, Kona Community Development Plan or Zoning Code.** Since the permit was amended in 2015, there has been no significant changes in the General Plan, Kona Community Development Plan or Zoning Code relative to the project area.

The General Plan designation for this area is Medium Density Urban, which allows for village and neighborhood commercial and single-family and multiple-family residential and related functions (multiple family residential -- up to 35 units per acre).

The General Plan articulates several goals, policies and actions around protecting valued archaeological, cultural, and historic resources on the island. These directives are particularly germane in the Special Management Area where the identification, assessment and protection of these resources are criteria for granting an SMA Permit.

According to SHPD records, in 1980 three historic sites consisting of a portion of a historic trail (SIHP 4619), an agricultural complex (SIHP 4633) and two small ahu (SIHP 4634), were previously documented within the project site. In January 2009, an archaeological assessment (AA) of parcel 78 was completed, however no traces of these sites were located during due to the extensive bulldozing of the property around 2004-05. In February 2014, a draft AA for parcel 90 was submitted to SHPD that also concluded that no historic sites were present on the property due to extensive bulldozing.

Condition No. 13 of the SMA permit required the applicant to consult with the State Na Ala Hele Trail Program and/or National Park Services' Ala Kahakai National Trails Program regarding the appropriateness of incorporating the remnants of a historic trail on the subject site and to provide a report of this consultation, including the incorporation of such a trail, if appropriate, to the Planning Department in conjunction with the Plan Approval process. By letter dated June 23, 2021, the applicant's representative provided the required report which outlined the consultation with Na Ala Hele and subsequent archaeological review on the location of trail segments in the project area and recommended treatment.

According to the report, the applicant did consult with Na Ala Hele who requested subsequent archaeological review be conducted to identify the location and significance of trail remnants in the project area. The applicant conducted subsequent studies which found that the trail never extended into parcel 90, however a portion of the trail once extended onto parcel 78 as identified in the 1980 AIS. That study also determined that the trail segment lacked significance as the alignment of the trail segment did not provide meaningful access for cultural practices on the landscape, thus no further work was recommended. SHPD accepted the AA in October 2015.

According to Na Ala Hele, although the trail has been destroyed on parcel 78, the underlying fee simple title of the trail section remains with the State of Hawai'i as unencumbered state land, and its use and disposition is subject to the approval of the Board of Land and Natural Resources (BLNR). As such, the Director is recommending updating Condition No. 13 to reflect the completion of the consultation and reporting requirement and to ensure that the location of the trail remnant is identified and depicted on any subsequent site plans to ensure that the land area is not used unless or until the applicant secures an easement from the State BLNR.

The property is zoned Multiple-Family Residential district, minimum land area of 3,000 square feet per unit (RM-3). RM-3 zoning would allow a maximum of 355 units on the combined 24.499-acre project site. The Kona Community Development Plan (CDP), adopted in 2008, designates the project area within the Kona Urban Area but outside of the Kahalu'u Makai Village Transit Oriented Development (TOD) area. Kamehameha III Road and Ali'i Drive fronting the subject property are designated in the CDP as secondary transit routes.

Based on the preceding, the granting of the requested time extension would not be contrary to the objectives and policies of General Plan, the Kona CDP, or the Zoning Code.

**The granting of the time extension would not be contrary to the original reasons for the granting of the permit.** SMA Permit No. 286 was amended by the Planning Commission with conditions on March 6, 2015, based on the criteria for



approving a Special Management Area Use Permit. The scope, design, layout, and phasing of the project approved by the Commission has not significantly changed since the permit was amended. Granting the time extension would simply provide the applicant additional time to develop the project. Thus, the time extension request is not contrary to the original reasons for granting the permit.



## 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

**MAR 06 2015**

Mr. Sidney M. Fuke  
Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

Amendment to Special Management Area Use Permit No. SMA 286  
Request: Amend SMA 286 Which Allowed the Development of a 212-Unit Multiple  
Family Residential Project by Including the Land Area and Density Permitted by  
SMA 456 for a Total of 228 Units on 24.5 Acres of Land  
Applicant: Pacifica Big Island, LLC  
Tax Map Key: 7-8-010:078 & 090

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The Leeward Planning Commission, at its duly held public hearing on February 19, 2015, voted to approve the above-referenced request to amend Special Management Area (SMA) Use Permit No. 286 to increase the residential unit density by 16 units to maximum unit count of 184 units for the remaining phases, increase the land area to include TMK: 7-8-010:90, and a time extension to complete construction of the development. The project site is situated on the east (mauka) side of the Kamehameha III Road-Ali'i Drive intersection, Kahuluu and Keauhou 1<sup>st</sup>, North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Final Plan Approval PLA-08-000376 issued on March 12, 2008 is null and void. Final Plan Approval for Phase II, covered by TMK: 7-8-010:078 and 090, consisting of no more than 184 units, shall be secured from the Planning Department within three years from the effective date of this amendment in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify proposed structure(s), access(es), fire protection measures, landscaping and security fencing for structures situated less than 75

**MAR 06 2015**

feet from the Kaulana at Kona project identified by TMK: 7-8-010:092, and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.

3. Construction, which includes site work, for Phase II shall commence within one year from the date of receipt of Final Plan Approval for the revised Phase II as described in Condition 2 and be completed within five years thereafter.
4. The applicant shall submit detailed water usage calculations for the Phase II development, prepared by a professional engineer licensed in the State of Hawai'i, to the Department of Water Supply within 180 days from the effective date of this amendment.
5. Access(es) to the proposed development shall meet with the approval of the Department of Public Works, provided however, that in no event shall the Phase II development take access to Kaluna Street through Phase I – Kaulana at Kona.
6. The applicant shall provide full improvements to the entire frontage along Kamehameha III Road and along the property's frontage with Ali'i Highway between Kamehameha III Road and Kaluna Street consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any relocation of utilities; meeting with the approval of the Department of Public Works prior to issuance of the certificate of occupancy for the proposed units. Install street lights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division. The applicant shall construct all improvements to dedicable standards and dedicate to the County. Said improvements may be deferred until required by the Department of Public Works; provided, however, that a bond or equivalent surety to assure its construction shall be posted with the County.
7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
8. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. The drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to receipt of a Certificate of Occupancy.

9. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
10. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with Department of Health regulations and construction industry standards and practices utilized during construction projects of the State of Hawai'i.
11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
12. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
13. The applicant shall consult with the staff of the State's Na Ala Hele Trail Program and/or National Park Services' Ala Kahakai National Trails Program regarding the appropriateness of incorporating the remnants of a historic trail on the subject site and shall provide a report of this consultation, including the incorporation of such a trail, if appropriate, to the Planning Department in conjunction with the Plan Approval process.
14. 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 affected area shall cease and the DLNR- State Historic Preservation Division immediately notified. Subsequent work within the affected area shall not proceed until clearance is obtained from the DLNR- State Historic Preservation Division.
15. All buildings shall be setback a sufficient distance from the property line fronting Kamehameha III Road so that the buildings do not substantially interfere with or detract from the line of sight toward the sea from the road. The applicant shall provide photo simulations and a view plane analysis with plans for Final Plan Approval showing view planes towards the sea from the road, particularly looking south and southwest, with the proposed buildings.

16. Unless a lesser setback is approved by the Planning Director, all proposed buildings and activity areas (i.e. swimming pools, tennis courts, etc.) shall observe a minimum setback of 200 feet from the center line from the golf course fairway. If deemed necessary, additional setbacks or other mitigating measures, such as additional landscaping along certain portions of the golf course boundaries, may be imposed at the time of plan approval review.
17. The highest point of any building that is constructed in the area designated as Area "A" on the diagram, which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall not exceed the elevation above mean sea level of the finished ground floor level of Building 1 of the Kaulana at Kona, Phase I, which building is located as shown on the attached Exhibit "A". The highest point of any building that is constructed in the area designated as Area "B" on the diagram, which is attached hereto as Exhibit "A" and incorporated by this reference, shall not exceed the elevation above mean sea level of the finished floor for the pool deck area of the Kaulana at Kona, Phase I which pool deck is located as shown on the attached Exhibit "A".
18. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements.
19. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this amendment. 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 the Planning Director acknowledges that further reports are not required.
20. An initial extension of time for the performance of conditions within this amended 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 this 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).

If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

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

[*Note: Ramseyer version available upon request.*]

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

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,



Brandi K. Beaudet, Chairman  
Leeward Planning Commission

LPacificabisland Amend SMA286lpc  
Enclosure: PC Findings Report

cc: Pacifica Big Island LLC  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Land & Natural Resources - HPD  
Department of Transportation-Highways, Honolulu  
Mr. Gilbert Bailado

**COUNTY OF HAWAI'I**  
**PLANNING COMMISSION FINDINGS**

**PACIFICA BIG ISLAND, LLC**

**AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 286**

The applicant is requesting to amend Special Management Area (SMA) Use Permit No. 286, which allowed the development of a 212-unit residential condominium project and related improvements on TMK 7-8-010:078. The amendment is to increase the density by 16 units, increase the land area to include TMK 7-8-010:090, and a time extension to complete construction of the development. The property is located on the east (mauka) side of the Kamehameha III Road - Ali'i Drive intersection, Kahulu'u and Keauhou 1<sup>st</sup>, North Kona, Hawai'i, TMK: 7-8-010:078 and 090.

SMA Use Permit No. 286 allowed the development of a 212-unit residential condominium project and related improvements on TMK 7-8-010:078. The applicant is requesting to amend Conditions 2 and 3 of SMA Permit No. 286 in order to increase the density by 16 units, increase the land area to include TMK 7-8-010:090, and obtain a time extension to complete construction of the development. Currently SMA Permit No. 456 allows for development of a 16-unit multiple family residential complex on TMK 7-8-010:090, which is a 3.69-acre adjoining property owned by the applicant. The applicant is requesting to amend SMA 286 to transfer and include the development rights covered by SMA 456.

The applicant requests the following specific amendments to Conditions 2 and 3 of SMA 286 (material to be deleted is bracketed and new material is underlined):

- "2. Final Plan Approval for Phase II, [Land Area 10] covered by TMK: 7-8-010:078 and 090, consisting of [168] 184 units, shall be secured from the Planning Department within three years from the effective date of this [new] amendment....."
- "3. Construction for Phase II shall commence within one year from the date of receipt of Final Plan Approval for the revised Phase II as described in Condition 2 and be completed within five years thereafter."

These amendments would require that construction of the 184 units begin within 4 years and be completed within 9 years of the effective date of the amendment, provided an administrative time extension is not granted.

The applicant requests the amendment in order to provide design flexibility over both properties and to make it easier to administer and track permit conditions. The amendment would have the effect of increasing the number of units for the 3.69-acre property covered by SMA 456 from 16 to 32 units, as depicted in the preliminary site plan.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, is to preserve, protect, and where possible, restore the natural resources of the coastal zone areas. Therefore, special controls on development within the SMA are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by

dedication or other means. The grounds for approving an SMA permit amendment are based upon the following criteria:

**The proposed development will not have any substantial 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.** In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options.

A "substantial adverse effect" is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. In reviewing the proposed development against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1 through 10), it has been determined that the proposed amendment will not have a significant adverse environmental or ecological effect upon the Special Management Area. It should be noted that under Planning Commission Rule 9-10 (H) (9), a proposed use, activity or operation may constitute a substantial adverse if it affects an environmentally sensitive areas, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water.

The property is located within Flood Zone X and there are no know topographic concerns that would adversely affect the property. The property is not located in an environmentally sensitive area. The property is located within an area adequately served with essential services and facilities such as County water, private sewer system, transportation systems and other utilities. Any potential runoff or discharge that could reach ocean waters will be handled by on-site improvements consistent with the requirements of the Department of Public Works and State Department of Health. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations and proper construction practices. Air emissions generated during the construction phase for the proposed project can be mitigated by existing construction regulations. With these precautionary measures in place, the proposed amendment is not anticipated to have any substantial adverse effects upon nearby coastal resources. Conditions of approval will be included to ensure that impacts on coastal resources are minimized.

**The proposed development is consistent with the objectives and policies provided by Chapter 205A, HRS and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.** The objectives and policies of Chapter 205A, HRS include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas.

*Coastal Recreational Resources:* The property is located over 2,000 feet mauka of the shoreline. There are several ways for future residents of the development and the general public to access the shoreline for recreation. A condition of the permit requires



pedestrian improvements along the property's Ali'i Drive and Kamehameha III Road frontage in order to provide safe access to the shoreline.

*Historic Resources:* Two archaeological assessments of the property were conducted which determined that no historic sites or features are currently present on the property due to previous grading. However, it is likely three historic sites, including a historic trail, were destroyed when the property was previously cleared. The Planning Department agrees with the State Historic Preservation Division's recommendation that the applicant consult with the State's Na Ala Hele Trail program and the National Park Service trail program to see if it would be possible to re-establish the historic trail on the property.

*Scenic and Open Space Resources:* Due to the sloping topography in the area, the sea can be viewed by motorists driving along Kamehameha III Road. Due to the topography of the property and proximity (less than 30 feet) of the buildings to the road, it is possible the view planes from Kamehameha III Road looking south and southwest may be partially obstructed. According to the Buildings 1, 2, and 3 on the applicant's site plan (Figure 3 in Application) will have the most significant impact to views towards the sea because there is currently a direct view of the sea from the road in this area and the property sits at a higher elevation than the road which will cause the buildings to sit above the road, thereby reducing views of the sea. However, the buildings are oriented in a way to create view corridors so that views of the sea are not completely blocked. Buildings 8, 9 and 10 are set back a substantial distance from the road and sit at a lower elevation than the road, thus views of the sea around these buildings should not be significantly affected. To mitigate view plane obstructions towards the sea, a condition will require photo simulations and a view plane analysis to ensure the buildings are setback a sufficient distance from the road.

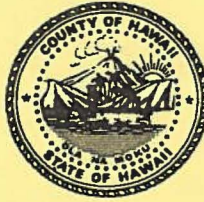
*Coastal Ecosystems and Marine Resources:* To address the potential impacts of soil erosion and water quality on marine resources and coastal ecosystems the applicant will implement best management practices as part of the NPDES permit process and comply with state and county regulations relating to storm water runoff including but not limited to Chapter 10, Erosion and Sedimentation Control, Hawai'i County Code. Additionally, wastewater generated by the project will be treated in a private sewer system.

*Beach Protection:* There are no beaches on or near the subject property.

*Coastal Hazards:* The elevation of the property varies from about 140 to 280 feet above mean sea level. The subject property is located just outside of the tsunami evacuation zone as designated by the County Civil Defense Agency and is located in Flood Zone "X", an area determined by FEMA to be outside the 500-year flood plain.

Lastly, the applicant will continue to be required to comply with all original conditions of SMA Permit No. 286 as well as additional conditions that have been recommended by reviewing state and county agencies based on current regulations.

Based upon the above findings, the proposed amendment is consistent with the objectives and policies of Chapter 205A, HRS.



## County of Hawai'i

### PLANNING COMMISSION

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

April 15, 2005

Steven S. C. Lim, Esq.  
Carlsmith Ball, LLP  
121 Waiianuenue Avenue  
Hilo, HI 96720

Dear Mr. Lim:

Special Management Area (SMA) Use Permit No. 286  
Applicant: Kamehameha Investment Corporation/Keauhou Kona Resort Co.  
Request: Time Extension to Condition No. 2  
Tax Map Key: 7-8-10:portion 78

The Planning Commission at its duly held public hearing on March 18, 2005, voted to approve the above-referenced request for a time extension to Condition No. 2 (time requirement to secure final plan approval of Phase II) of SMA No. 286. SMA No. 286 allowed the development of 212 condominium units and related improvements. The property is located at the southern corner of the Kamehameha III Road – Alii Highway intersection, Keauhou-Kona, North Kona, Hawaii.

Approval of this request is based on the following:

The applicants are requesting a 2-year time extension to Condition No. 2 of Special Management Area Use Permit No. 286 (Phase II – Land Area 10) to extend the deadline within which to submit Final Plan Approval for the project from December 2, 2004 to December 2, 2006. Condition No. 2 of SMA Use Permit No. 286 states:

“Final Plan Approval for Phase II, Land Area 10, consisting of 168 units, shall be secured from the Planning Department within two years from the effective date of this amendment. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structure(s), access(es), and parking areas. Further,

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APR 15 2005

the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.”

The Planning Commission approved SMA Use Permit No. 286, effective August 15, 1989, to allow for the development of a 276-unit residential condominium project and related improvements to be constructed in phases. The subject properties are zoned Multiple Family Residential (RM-3). Phase I, consisting of 44 units, has already been constructed on Parcel 92. The applicants propose to develop 168 units (Phase II) on Parcel 78 for a total of 212 units. The original proposal as described in SMA Use Permit No 286 was for a total of 276 units. Final Plan Approval for the existing Phase I (44-unit) development was issued in 1990 with construction completed in 1991. Completion of Phase I was accomplished in full satisfaction of all requirements of SMA Use Permit No. 286.

On November 1, 2002, the Planning Commission voted to approve amendments to SMA Use Permit No. 286. These amendments were approved with certain modifications, including to provide for distinct and separate conditional requirements between Phase I – Kaulana at Kona and the remaining 168-units that comprise Phase II - Kaulana at Kona; to reduce the number of units permitted within Phase II (Land Area 10) from 232 units to 168 units, a reduction of 64 units; to amend Condition No. 2 to allow for an additional 2 years in which to secure Final Plan Approval for the remaining 168 units (Phase II); and to amend Condition No. 3 to adjust the timing of construction for Phase II to accommodate the amendment to Condition No. 2.

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 are not the result of their fault or negligence. According to the applicants, KIC and its related entities have undergone a master planning process which will culminate in the selection process of a master developer for the Keauhou Resort. As a result of this selection process, the design phase for Land Area 10 has been delayed. The applicants could not have foreseen this delay. Therefore, the non-performance was a result of conditions that could not have been foreseen by the applicants and are not the result of the applicant's fault or negligence.

Granting of the time extension would not be contrary to the General Plan or Zoning Code. The General Plan for this area is Medium Density Urban, which allows for village and neighborhood commercial and single family and multiple residential and related functions (multiple family residential-up to 35 units per acre). The property is zoned Multiple-Family Residential (RM-3). The granting of the time extension would not be contrary to the General Plan or the Zoning Code.

Granting of the time extension would not be contrary to the to the original reasons for the granting of the change of zone. The original reasons for the approval of Special Management Area Use Permit No. 286, and its amendments, are still applicable today and the request is not contrary to these reasons. The Planning Department has received revised comments from the Department of Public Works. These revisions have been incorporated within amended Condition No. 5.

Based on the discussion above, the Planning Director has concluded that request for a 2-year time extension to Condition No. 2 (time requirement to secure final plan approval of Phase II) of SMA Use Permit No. 286 would not be contrary to the General Plan or Zoning Code nor the original reasons for granting of the permit. This request is approved with the following changes to conditions (material to be deleted is bracketed. new material is underscored):

**SMA Use Permit No. 286- (Phase I)-Kaulana at Kona, Phase I**

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. 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 affected area shall cease and the Planning Department immediately notified. Subsequent work within the affected area shall not proceed until clearance is obtained from the Planning Director.
3. Comply with all other applicable governmental laws, rules, regulations and requirements.

**SMA Use Permit No. 286-(Phase II)-Land Area 10**

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Final Plan Approval for Phase II, Land Area 10, consisting of 168 units, shall be secured from the Planning Department within [two] three years from the effective date of this new amendment. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structure(s), access(es), and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.

Steven S. C. Lim, Esq.

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3. Construction for Phase II shall commence within one year from the date of receipt of Final Plan Approval and be completed within five years thereafter.
4. Access(es) to the proposed development shall meet with the approval of the Department of Public Works, provided however, that in no event shall the Phase II – Land Area 10 development take access to Kaluna Street through Phase I – Kaulana at Kona.
5. [Curbs, gutters, and sidewalks and pavement improvements shall be provided along the property's frontage with Ali'i Highway between Kamehameha III Road and Kaluna Street meeting with the approval of the Department of Public Works prior to issuance of the certificate of occupancy for the proposed units. Said improvements may be deferred until required by the Department of Public Works; provided, however, that a bond or equivalent surety to assure its construction shall be posted with the County.]  
The applicants shall provide full improvements to the entire frontage along Kamehameha III Road and along the property's frontage with Alii Highway between Kamehameha III Road and Kaluna Street consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any relocation of utilities; meeting with the approval of the Department of Public Works prior to issuance of the certificate of occupancy for the proposed units. Install street lights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division. The applicants shall construct all improvements to dedicable standards and dedicate to the County. Said improvements may be deferred until required by the Department of Public Works; provided, however, that a bond or equivalent surety to assure its construction shall be posted with the County.
6. A drainage system shall be installed meeting with the approval of the Department of Public Works.
7. 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 affected area shall cease and the Planning Department immediately notified. Subsequent work within the affected area shall not proceed until clearance is obtained from the Planning Director.
8. Unless a lesser setback is approved by the Planning Director, all proposed buildings and activity areas (i.e. swimming pools, tennis courts, etc.) shall observe a minimum setback of 200 feet from the center line from the golf course fairway. If deemed necessary, additional setbacks or other mitigating measures, such as additional landscaping along certain portions of the golf course boundaries, may be imposed at the time of plan approval review.

9. The highest point of any building that is constructed in the area designated as Area "A" on the diagram, which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall not exceed the elevation above mean sea level of the finished ground floor level of Building 1 of the Kaulana at Kona, Phase I, which building is located as shown on the attached Exhibit "A". The highest point of any building that is constructed in the area designated as Area "B" on the diagram, which is attached hereto as Exhibit "A" and incorporated by this reference, shall not exceed the elevation above mean sea level of the finished floor for the pool deck area of the Kaulana at Kona, Phase I which pool deck is located as shown on the attached Exhibit "A."
10. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements.
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. 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. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: 1) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, its 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 may initiate procedures to revoke this permit.]

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

Steven S. C. Lim, Esq.

Page 6

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

Sincerely,

*Manohar D. Springer for*  
Fred Galdones, Chairman  
Planning Commission

Lkic01PC

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
Department of Land and Natural Resources/HPD-Kona  
Rodney Haraga, Director/DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Zoning Inspector – Kona  
Plan Approval Section

Harry Kim  
Mayor



**County of Hawaii**  
**PLANNING COMMISSION**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
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DEC 02 2002

Steven S. C. Lim, Esq.  
Carlsmith Ball, LLP  
P.O. Box 686  
Hilo, HI 96721-0686

Dear Mr. Lim:

Amendments to Special Management Area Use Permit No. 286 (SMA 286)  
Applicant: Kamehameha Investment Corporation & Keauhou Kona Resort Company  
Tax Map Key: 7-8-10:Portion of 78

The Planning Commission at its duly held public hearing on November 1, 2002, voted to approve the amendments to Special Management Area (SMA) Use Permit No. 286, which allowed the development of a 276-unit condominium project and related improvements. The property is located at the southeast corner of Kamehameha III Road and Ali'i Highway intersection, between the Life Care Center of Kona and the Kaulana at Kona Condominium complex, Keauhou, North Kona, Hawaii.

The following amendments, as requested by the applicant, are hereby approved with certain modifications:

- a. amend SMA Use Permit No. 286 to provide for distinct and separate conditional requirements between Phase I – Kaulana at Kona and the remaining 168-units that comprise Phase II - Kaulana at Kona;
- b. amend SMA Use Permit No. 286 to reduce the number of units permitted within Phase II (Land Area 10) from 232 units to 168 units, a reduction of 64 units;
- c. amend Condition No. 2 to allow for an additional 2 years in which to secure Final Plan Approval for the remaining 168 units (Phase II); and
- d. amend Condition No. 3 to adjust the timing of construction for Phase II to accommodate the amendment to Condition No. 2. The proposed amendment will

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provide the applicant with a timeframe of 5 years from the date of Final Plan Approval by which to complete construction of Phase II.

Approval of this request is based on the following:

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, is to preserve, protect, and where possible, to restore the natural resources of the coastal 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.

The Keauhou Resort lands were master-planned in the 1960's and 1970's to allow for the orderly development of a residential community within a resort setting. A major resort area is a self-contained resort destination area which provides basic and support facilities for the needs of the entire development as well as to provide a variety of visitor services and attractions. A major portion of the Keauhou lands on the makai side of Ali'i Highway have been developed with three hotel sites - Kona Surf Hotel, Keauhou Beach Hotel and Kona Lagoon Hotel; several multiple family residential developments - Mauna Loa Villas Condominiums, Keauhou Punahale Condominiums, Keauhou Akahi Condominiums, Keauhou Gardens, Keauhou Surf & Racquet Club; Kanaloa at Keauhou; single family residential development; and the Kona Country Club Golf Course. Developments on lands mauka of Ali'i Highway and Kamehameha III Road include the Keauhou Shopping Village, Keauhou Estates single family residential subdivision, Hale Kehau and The Villas multiple family residential condominiums, Hillhaven Medical Care Facility, and a golf course.

The Planning Commission approved SMA Use Permit No. 286, effective August 15, 1989, to allow for the development of a 276-unit residential condominium project and related improvements to be constructed in phases. The subject property is zoned Multiple Family Residential (RM-3). The applicant has already constructed 44 units (Phase I) on Parcel 92 and proposes to develop 168 units (Phase II) on Parcel 78 for a total of 212 units. The original proposal as described in SMA Use Permit No. 286 was for a total of 274 units. Final Plan Approval for the existing Phase I (44-unit) development was issued in 1990 with construction completed in 1991. Completion of Phase I was accomplished in full satisfaction of all requirements of SMA Use Permit No. 286.

This approval to amend SMA Use Permit No. 286 to provide for distinct and separate conditional requirements between Phases I and II of the Kaulana at Kona residential development to allow for the reduction of the number of units to be permitted within Phase II from 232 units to 168 units; and to amend Condition No. 2 and 3 to allow

for an additional 5 years in which to secure Final Plan Approval for the remaining 168 units (Phase II-Land Area 10) will not be contrary to the original reasons for granting of SMA Use Permit No. 286. The existing development of Kaulana of Kona represents Phase I (44 units) of the original development. In 1989, the land upon which Phase I resides (5.750 acres) was subdivided from the original 20.8-acre project area into a new Parcel 92. Phase I development was completed in 1991. The original 276-unit development was reviewed under the approval of SMA Use Permit No. 286 and found to be in conformance with the requirements of Chapter 205A, Hawaii Revised Statutes and Planning Commission Rule No. 9 regarding the Special Management Area. Two of the requested amendments deal with the administration of the requirements of SMA Use Permit No. 286. The third requested amendment asks for a reduction in the scope of the proposed development by reducing the permitted unit count by 64 units. The reduction of 64-units will result in the commensurate reduction of related impacts upon coastal resources and to public infrastructure and facilities. The reduced development of Phase II will continue to be consistent with the General Plan and the Kona Regional Plan. These requested amendments do not increase the scope or nature of the project and will not be contrary to the Planning Commission's original findings for SMA Use Permit No. 286.

Based on the above findings, it is also determined that the existing 44-unit development, which reflects Phase I – Kaulana at Kona, on TMK: 7-8-10:92, has been completed in full satisfaction of the requirements and conditions of SMA Use Permit No. 286. The separation of conditional requirements for the existing Phase I development from Phase II will not have any substantial adverse impacts on the surrounding area; nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management; Rule No. 9 of the Planning Commission relating to the Special Management Area; and the original reasons for approving SMA Use Permit No. 286.

Therefore, approval of this request is subject to the following conditions and their amendments (material to be deleted is bracketed with material to be added bold and underscored):

SMA Use Permit No. 286- (Phase I)-Kaulana at Kona, Phase I

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. 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 affected area shall cease and the Planning Department immediately notified. Subsequent work within the affected area shall not proceed until clearance is obtained from the Planning Director.
3. Comply with all other applicable governmental laws, rules, regulations and requirements.

SMA Use Permit No. 286-(Phase II)-Land Area 10

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Final Plan Approval for [the entire development]Phase II, Land Area 10, consisting of 168 units, shall be secured from the Planning Department within [one year]two years from the effective date of this [permit]amendment. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structure(s), access(es), and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.
3. Construction for Phase II shall commence within one year from the date of receipt of Final Plan Approval and be completed within [two]five years thereafter. [Construction for the subsequent phase(s) shall commence within one year from the completion of the previous phase(s) and be completed within two years thereafter.]
4. Access(es) to the proposed development shall meet with the approval of the Department of Public Works, provided however, that in no event shall the Phase II – Land Area 10 development take access to Kaluna Street through Phase I – Kaulana at Kona.
5. Curbs, gutters, and sidewalks and pavement improvements shall be provided along the property's frontage with Ali'i Highway between Kamehameha III Road

and Kaluna Street meeting with the approval of the Department of Public Works prior to issuance of the certificate of occupancy for the proposed units. Said improvements may be deferred until required by the Department of Public Works; provided, however, that a bond or equivalent surety to assure its construction shall be posted with the County.

6. A drainage system shall be installed meeting with the approval of the Department of Public Works.
7. 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 affected area shall cease and the Planning Department immediately notified. Subsequent work within the affected area shall not proceed until clearance is obtained from the Planning Director.
8. Unless a lesser setback is approved by the Planning Director, all proposed buildings and activity areas (i.e. swimming pools, tennis courts, etc.) shall observe a minimum setback of 200 feet from the center line from the golf course fairway. If deemed necessary, additional setbacks or other mitigating measures, such as additional landscaping along certain portions of the golf course boundaries, may be imposed at the time of plan approval review.
9. The highest point of any building that is constructed in the area designated as Area "A" on the diagram, which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall not exceed the elevation above mean sea level of the finished ground floor level of Building 1 of the Kaulana at Kona, Phase I, which building is located as shown on the attached Exhibit "A". The highest point of any building that is constructed in the area designated as Area "B" on the diagram, which is attached hereto as Exhibit "A" and incorporated by this reference, shall not exceed the elevation above mean sea level of the finished floor for the pool deck area of the Kaulana at Kona, Phase I which pool deck is located as shown on the attached Exhibit "A".

[9]10. Comply with all other applicable laws, rules, regulations and requirements.

[10]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. 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.

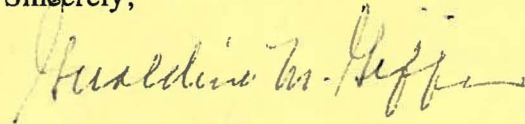
Steven S. C. Lim, Esq.  
Page 6

[11]12. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: 1) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, its 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 may initiate procedures to revoke this permit.

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

Should you have any questions, please contact Alice Kawaha of the Planning Department Hilo office at 961-8288 or Daryn Arai of the Kona office at 327-3510.

Sincerely,

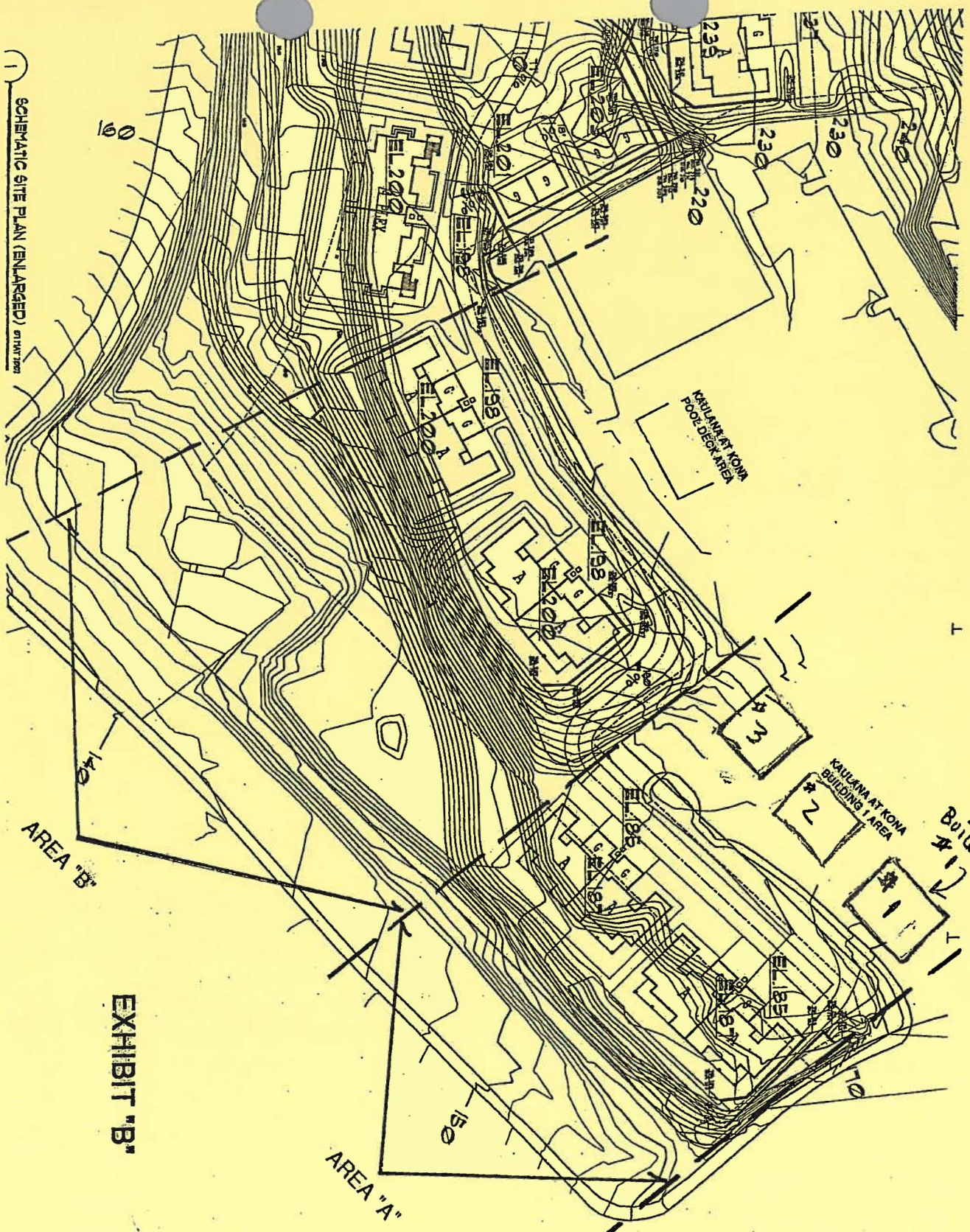


Geraldine M. Giffin, Chairman  
Planning Commission

Lkicsma28601PC

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
Office of Planning, CZM Program (w/Background)  
Brian Minaai, Director/DOT-Highways, Honolulu  
Mr. Norman Hayashi  
Mr. Jeffrey Darrow  
Plan Approval Section

SCHEMATIC SITE PLAN (ENLARGED) 01/14/78



AREA "B"

EXHIBIT "B"

AREA "A"

ISSUE REVISION DATE

OWNER:

PROJECT:

DUNNOR-GISCO LABOR  
76-187 KALAWI STREET, SUITE 202  
KAILUA, HAWAII 96731  
TEL: (808) 251-2822  
FAX: (808) 251-4153

PACIFIC APPLER  
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700 ALIHOLOA STREET, SUITE 4155  
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FAX: (808) 451-3468

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SHEET TITLE:

SHEET NUMBER:

A6  
OF -  
DATE: 20 MAY 2002

1 SCHEMATIC SITE PLAN  
SCALE: 1" = 50'-0"

BY: [Signature]

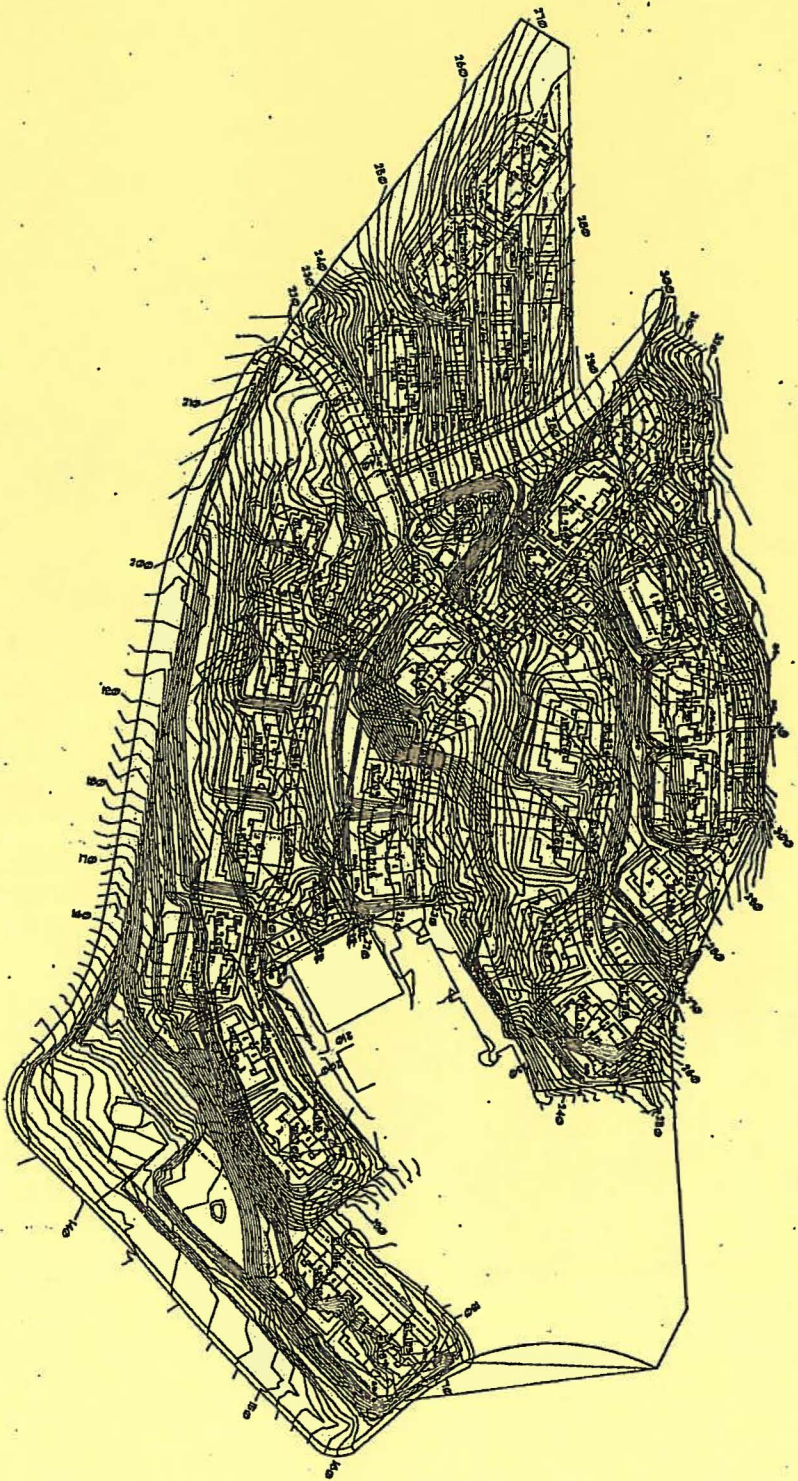


EXHIBIT 'A'

ISSUE: [Blank]  
REVISION: [Blank]  
DATE: [Blank]

PROJECT: [Blank]

OWNER: [Blank]

DINMORE - CISCO LABS  
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SHEET NUMBER:  
A1

DATE: 20 MAY 2002

CERTIFIED MAIL

August 15, 1989

Joseph K. Spencer, III, Vice President  
Keauhou Kona Associates  
78-6831 Alii Drive, Suite 234  
Kailua-Kona, HI 96740-2413

Dear Mr. Spencer:

Special Management Area Use Permit Application  
Applicant: Keauhou Kona Associates  
Tax Map Key: 7-8-10:Portion of 78

The Planning Commission at its duly held public hearing on August 8, 1989, voted to approve your application, Special Management Area (SMA) Use Permit No. 286, to allow the development of a 276-unit residential condominium project and related improvements, including a 6-lot subdivision, adjacent to and on the south (makai) side of the Hillhaven Corporation's facility and bordered by Kamehameha IV Road, Alii Highway, and Kaluna Street, Keauhou-Kona Resort, Keauhou, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205-A, Hawaii Revised Statutes (HRS), and Rule No. 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 zone areas. Therefore, special controls on development within the 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 development within the SMA is that it is consistent with the General Plan and zoning designation. The proposed development does conform to the General Plan which designates the area as a Major Resort Area. Further, with its Multiple Family Residential (RM-3) zoning, the

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area is appropriately zoned for the proposed use. The request is also consistent with the Kona Regional Plan Land Use Concept Map which designates the property for residential uses.

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 be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options." The proposed development is not anticipated to have any substantial adverse environmental or ecological effects. The property is not a habitat for any endangered plant or animal species. Also, no adverse impacts on air quality are expected to be generated by the proposed development. Air emissions generated during the construction phase can be mitigated by the existing rules and regulations.

It should be noted that any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Negative impacts on the local water quality resulting from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing ordinances and regulations. Furthermore, the property is located over 2,000 feet from the shoreline. As such, it should have minimal impacts to the coastal resources.

Since the proposed buildings will be constructed a great distance from the highway, they are not expected to impede the mauka-makai view plane from Kuakini Highway. Further, the scenic resources and view planes of the Keauhou Kona Resort will be carefully considered for compliance with the Comprehensive Design Principles for Keauhou-Kona and in-depth site analysis of the property as it may affect the adjacent properties. The proposed buildings will consist of two, three, and four stories and will not exceed the maximum allowable height limit of forty-five feet as stipulated within the Multiple Family Residential (RM) zoned district. Furthermore, the slope and topographical contours of the terrain will tend to alleviate the visual and structural impact of the low profile buildings.

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Open space resources will still be retained by the adjacent golf course property. To avoid any impact to the proposed units and activity areas (swimming pools) of the project from the adjacent golf course activity, the applicant has provided a 100-foot setback from the golf course property lines to any buildings on the property.

Any impacts to the historical or archaeological resources of the area have been satisfactorily mitigated. All necessary field work and testing have been performed, and no further site work is recommended by the archaeologist.

Public access to and along the shoreline will not be affected because of the project's considerable distance from the coastal waters. As stated earlier, the property is over 2,000 feet from the shoreline. The project also will not interfere with any publicly owned or used recreational area.

Based on the above, it has been determined that the proposed development will not have any substantial adverse impacts on the surrounding area nor will its approval be inconsistent with the General Plan and Zoning Code or contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to Special Management Area.

Approval of this request is subject to the following conditions:

1. The applicant, its successors, or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Final Plan Approval for the entire development shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structure(s), access(es), and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.

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3. Construction for Phase I shall commence within one year from the date of receipt of Final Plan Approval and be completed within two years thereafter. Construction for the subsequent phase(s) shall commence within one year from the completion of the previous phase(s) and be completed within two years thereafter.
4. Access(es) to the proposed development shall meet with the approval of the Department of Public Works.
5. Curbs, gutters, and sidewalks and pavement improvements shall be provided along the property's frontage with Alii Highway between Kamehameha III Road and Kaluna Street meeting with the approval of the Department of Public Works prior to issuance of the certificate of occupancy for the proposed units. Said improvements may be deferred until required by the Department of Public Works; provided, however, that a bond or equivalent surety to assure its construction shall be posted with the County.
6. A drainage system shall be installed meeting with the approval of the Department of Public Works.
7. 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 affected area shall cease and the Planning Department immediately notified. Subsequent work within the affected area shall not proceed until clearance is obtained from the Planning Director.
8. Unless a lesser setback is approved by the Planning Director, all proposed buildings and activity areas (i.e. swimming pools, tennis courts, etc.) shall observe a minimum setback of 200 feet from the center line of the golf course fairway. If deemed necessary, additional setbacks or other mitigating measures, such as additional landscaping along certain portions of the golf course boundaries, may be imposed at the time of plan approval review.
9. Comply with all other applicable laws, rules, regulations, and requirements.
10. 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

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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 the Planning Director acknowledges that further reports are not required.

11. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: 1) 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; and 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 director may initiate procedures to nullify 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.

As requested by Commissioner Mike Luce, please provide us with ten copies of the Comprehensive Design Principles for Keauhou-Kona.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Gary Mizuno  
Chairman, Planning Commission

cc: Mr. Sidney Fuke  
Mr. Parker Wolff  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Office - Kona  
DBED, CZM Program w/background  
DLNR/Honolulu

bcc: Plan Approval Section