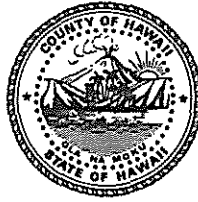


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL
Z 095 323 801

FEB 13 1997

Mr. Herb K. Kane
Abigail K. K. Kawananakoa Foundation
P.O. Box 163
Captain Cook, HI 96704

Dear Mr. Kane:

Special Management Area Use Permit Application (SMA 96-4) ✓
Use Permit Application (USE 96-3)
Applicant: Abigail K. K. Kawananakoa Foundation
Request: Construction of a Sanctuary - Kekaha O 'Iolani Luahine
Tax Map Key: 8-2-06:08

The Planning Commission at its duly held public hearing on February 6, 1997, voted to approve the above-referenced applications. Special Management Area Use (SMA) Permit No. 372 and Use Permit No. 152 are hereby issued to allow the construction of a Sanctuary - Kekaha O 'Iolani Luahine and related improvements on 2.06 acres of land situated within the County's Single Family Residential (RS-15) zoned district. The property is located along the makai side of Pu'uhonua Road approximately 600 feet mauka of the County Napoopoo Park at Kealalekua Bay, South Kona, Hawaii.

Approval of the Special Management Area (SMA) request is based on the following:

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS) and 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 an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

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

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adverse effect and elimination of planning options. The proposed development will consist of a two-story building with a gross floor area of 2,406 square feet. The upper floor area will consist of an area for display, lectures, dance instruction and gatherings, including a library/study and a kitchen. On the ground level, there will be men and women dressing areas, shower and toilet facilities, as well as rooms for storage and a janitor closet. There will be twelve (12) parking spaces of which two are handicap stalls, and the building will be handicap accessible. The proposed development is located approximately 250 feet from the shoreline and is not adjacent to the shoreline; therefore, public access will not be affected. The proposed structure will be designed to be sensitive to the historic appearance of the original residence and period of design and approximately 29 feet high. Therefore, there would be no adverse impact to recreational and visual resources, access to and along the shoreline nor coastal ecosystems. The property was cleared and used as a residence in the past and is presently vacant. Current vegetation on the property is dominated by non-native plants. There are no known rare or endangered plant life or animal species on the property or in its immediate vicinity. The proposed development is not expected to impact the immediate adjacent properties as the subject property is surrounded by single family dwellings to the north, east and south. In regards to traffic, it is not anticipated that traffic generated from the cultural facility will have a substantial adverse impact on visual view planes within the coastal zone. As such, no substantial adverse ecological effects to the physical environment within the immediate area is anticipated to be generated by the proposed project.

The proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. Wastewater generated from the proposed development should be treated and disposed of in accordance with the regulations of the State Department of Health. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects on the coastal resources or environment.

The site is within the Kealakekua Bay Archaeological and Historical District, Hawaii Register of Historic Places Number 10-47-7000, and listed on the National Register of Historic Places in 1974. An archaeological inventory was prepared by Scientific Consultant Service in March 1995 and submitted to the State Historic Preservation Division for their review. The State Historic Preservation Division approved the archaeological Preservation Plan by letters dated July 19, 1996 - Exhibit B and August 2, 1996 - Exhibit C. The establishment of buffer zones, interim protection measures and remaining archaeological implementation of the Preservation Plan still needs to be completed. Therefore, a condition of approval will be included stating that the applicant fully implement the approved historic preservation plan prior to securing of any land alteration permits for the proposed development. The implementation of this mitigation plan will satisfy the SMA objective to "Protect, preserve and where desirable restore significant historic and cultural resources."

The proposed development is consistent with the County General Plan and Zoning Code. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area for Low Density Residential. Such a designation is defined in the General Plan as "single family residential" in character, ancillary community and public uses, and convenience type commercial uses. Mindful of the type of service the applicant will provide to the residents of West Hawaii, the proposed use will compliment the following goals and policies of the General Plan:

Land Use Element:

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- * The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Historic Sites:

- * Protect and enhance the sites, buildings and objects of significant historical and cultural importance to Hawaii
- * The County of Hawaii shall encourage the restoration of significant sites on private lands.
- * The County shall also aid in the development of a program of public education concerning historic sites.

Based on the above findings, it is determined that the proposed development 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 and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of the **Special Management Area (SMA)** request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of the permit.
3. The applicant, its successors or assigns shall be responsible for complying with all conditions of the Use Permit.

4. The Abigail Kawananakoa Foundation shall allow Fern Pule, Harriet Dooley and their respective natural siblings and issue access to the property described as TMK: 8-2-6:08 for the purposes of practicing the traditional Hawaiian cultural values of worship and gathering of medicinal herbs. This access shall be allowed at least weekly and shall be by appointment with the Foundation and shall not be unreasonably denied. The Foundation may limit or restrict the access during periods of construction and landscaping for purposes of safety.
5. Any drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works and prior to the issuance of a certificate of occupancy.
6. Wastewater generated by the proposed development shall be disposed of in a manner meeting with the approval of the Department of Health or Department of Public Works, whichever is applicable.
7. The Preservation Plan approved by the State Department of Land and Natural Resources-Historic Preservation Division which consists of proposed buffers, maintenance commitments and interim protection measures shall be implemented and completed prior to the submittal of plans for Final Plan Approval review or prior to the issuance of any land alteration permits.
8. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
9. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the Special Management Area Major Use Permit.

Approval of the Use Permit request is based upon the following:

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to a Use Permit require that such action conforms to the following guidelines:

- (A) The granting of the proposed use will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan.
- (B) The granting of the proposed use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or surrounding properties.
- (C) The granting of the proposed use will not adversely affect similar or related existing uses within the surrounding area, community or region.
- (D) The granting of the proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed use will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan. The establishment of a Hawaiian cultural facility on a parcel located within the State Land Use Urban District and the County's Single Family Residential (RS-15) zoned district may be permitted through the Use Permit review process. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses as well as the General Plan goals and policies. The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the location and use of buildings, off-street parking, the percentage of lots that may be occupied, the density of population and land for trade, industry, residence or other purposes. The proposed cultural facility will be approximately 2,406 square feet in size and handicap accessible. The minimum off-street parking requirement is one stall for each two hundred square feet of gross floor area. The applicant proposes to provide twelve (12) off-street parking stalls, of which two are handicapped stall. The subject property is designated as "Low Density" on the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. Such a designation is defined in the General Plan as "single family residential" in character, ancillary community and public uses, and convenience type commercial uses. The proposed use will complement the following goals, policies and standards of the General Plan.

Land Use Elements:

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- * The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Historic Sites:

- * Protect and enhance the sites, buildings and objects of significant historical and cultural importance to Hawaii
- * The County of Hawaii shall encourage the restoration of significant sites on private lands.
- * The County shall also aid in the development of a program of public education concerning historic sites.

Due to the already existing use and improvements on the subject property and the surrounding areas, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the project site, nor has the project site been identified as a significant botanical or biological habitat. The site is within the Kealahou Bay Archaeological and Historical District, Hawaii Register of Historic Places Number 10-47-7000, and listed on the National Register of Historic Places in 1974. An archaeological inventory was prepared by Scientific Consultant Service in March 1995 and submitted to the State Historic Preservation Division for their review. A Preservation Plan has been reviewed and approved by the Department of Land and Natural Resources, Historic Preservation Division. The establishment of buffer zones, interim protection measures and implementation of the approved Preservation Plan still needs to be completed. Applicable requirements, will be included as conditions with the Special Management Area Use Permit. The project site is located within an area adequately served with essential services and facilities such as water, transportation systems and other utilities.

The desired use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or surrounding properties. The facility will not detract from the present character of the area. The design of the facility will be sensitive to the historic appearance of the original residence and period of design. The same type of building materials will be used: metal roofing, wood (board and batten) walls, wood posts and wood railings. It is not anticipated that noise and traffic associated with the proposed use will adversely impact surrounding properties. Due to the developed nature of the subject property and the immediate surrounding areas, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the project site, nor has the area been identified as a significant botanical or biological habitat.

The proposed use will not adversely affect similar or related existing uses within the surrounding area, community or region. Through the use permit process, potential impacts to the built environment and its infrastructure can be evaluated on a

case-by-case basis. In this case, the proposed low profile facility will be compatible with the existing single family residences.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure. The project site is located within an area adequately served with essential services and facilities such as water, transportation systems, and other utilities. However, the parcel is served by a substandard one lane roadway with a pavement width of approximately 10 feet. Therefore, a condition of approval will be included stating that a Traffic Analysis Report should be performed to determine anticipated traffic levels and enable proper design of roadways.

Approval of the Use Permit request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of the permit.
3. The applicant, its successors or assigns shall be responsible for complying with all conditions of the Special Management Area Use Permit.
4. The Abigail Kawananakoa Foundation shall allow Fern Pule, Harriet Dooley and their respective natural siblings and issue access to the property described as TMK: 8-2-6:08 for the purposes of practicing the traditional Hawaiian cultural values of worship and gathering of medicinal herbs. This access shall be allowed at least weekly and shall be by appointment with the Foundation and shall not be unreasonably denied. The Foundation may limit or restrict the access during periods of construction and landscaping for purposes of safety.
5. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to the start of construction, Final Plan Approval for the proposed improvements shall be secured from the Planning Department in accordance with Chapter 25-243 of the Zoning Code. Plans shall identify the proposed structures, vehicular traffic, paved driveway access and parking stalls associated with the proposed use. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties.
6. Access, roadway and any drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works and prior to the issuance of a certificate of occupancy.

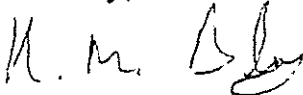
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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

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

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

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

AK:syw

LKawan04.PC

cc: 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
Abigail K. K. Kawananakoa Foundation
Mr. James R. Beimborn
Ms. Fern Pule
Ms. Harriet Dooley