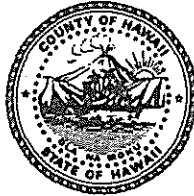


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
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SEP 03 1998

Christopher Lau, President
Towne-Development of Kona, Inc.
220 South King Street, Suite 2170
Honolulu, HI 96813

Dear Mr. Lau:

Special Management Area Use Permit Application (SMA 98-3)
Applicant: Towne-Kona Limited Partnership
Request: Allow for the Development of Approximately 400 Single-Family
Residential Units and Related Improvements
Tax Map Key: 7-7-8:11, 30 and 96

The Planning Commission at its duly held public hearing on August 20, 1998, voted to approve the above-referenced application and adopt the Report of the Contested Case Hearing Officers; Findings of Fact and Conclusions of Law; Decision and Order with amendments. Special Management Area Use (SMA) Permit No. 385 is hereby issued to allow the development of approximately 400 single family residential units and related improvements. The property is located between Kuakini Highway and the White Sands Beach Estates Subdivision, Pahoehe 4th, La'aloa 1st & 2nd and Kapalaalaea 1st, North Kona, Hawaii.

Approval of this request is based on the following:

FINDINGS OF FACT

1. On or about January 12, 1998, TKLP submitted an application for an SMA Use Permit on behalf of itself, Karen Kobayashi and Katherine Staton to allow the development of Keauhou View Estates, a subdivision project of approximately 400 single-family residential lots, dwelling units and related improvements (the "Project").

Description of the Project Site and Surrounding Area

2. The Project is located within the County's Special Management Area on approximately 169 acres of land identified as TMKs:(3)7-7-08:11, 30 & 96 situated between Kuakini Highway and White Sands Beach Estates Subdivision at Pahoehe 3rd and 4th, Laaloa 1st and 2nd and Kapalaalaea 1st, North Kona, County and State of Hawaii.

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3. The Project site is currently vacant of any use and was formally used for cattle grazing.

4. The Project site is situated on the leeward slopes of Hualalai in the North Kona district. Ground elevation rises from approximately 60 feet at the makai boundary to about 500 feet above sea level at the mauka boundary along Kuakini Highway.

5. The slope of the Project site averages approximately 15 percent across most of the site. The slopes of the makai portions range between 0 and 10 percent while the mauka portions are steeper, exceeding 20 percent in places.

6. There are no threatened or endangered species as listed by the U.S. Fish and Wildlife Service or the Department of Land and Natural Resources present on the Project site, nor are there any unique or valuable wildlife habitats.

7. The Project site is approximately 600 feet from the shoreline at its nearest point. The Project site is buffered from the shoreline by residential development makai of Alii Drive, Alii Drive which has a 50-foot right-of way, and the White Sands Beach Estates Subdivision.

8. The land makai or west of the Project site includes the White Sands Beach Estates Subdivision which is zoned Single Family Residential - 7,500 square feet and is utilized for single family residential purposes. White Sands Beach Estates Subdivision was originally developed in 1965 and includes a total of approximately 135 lots developed within three increments.

9. Adjacent lands to the south and north of the Project site are vacant. The areas to the north have been rezoned to Single Family and Multiple Family Residential. The area to the south is zoned Agricultural 5-acre and is within the State Land Use Agricultural District.

Chronology

10. On October 13, 1983, Change of Zone Ordinance No. 83-28 was approved which rezoned a portion of the Project site, subject to certain conditions, as follows:

(a) 37.290 acres were rezoned from Unplanned (U) to Single Family Residential - 7,500 square feet.

(b) 112.844 acres were rezoned from Unplanned (U) to Single Family Residential - 15,000 square feet.

11. On December 27, 1990, Change of Zone Ordinance No. 90-162 was adopted amending the conditions of approval of Ordinance No. 83-28. More specifically, Ordinance No. 90-162 allowed for a time extension to submit and secure Final Subdivision Approval and modified various conditions.

12. On May 22, 1996, Change of Zone Ordinance No. 96-60 was adopted amending the conditions of approval of Ordinance No. 83-28, as amended by Ordinance No. 90-162.

13. On March 13, 1997, Ordinance No. 97-42 was approved which rezoned a 14.103 acre portion of the Project site from Unplanned (U) to Single Family Residential - 15,000 square feet subject to certain conditions.

14. The conditions of approval of Ordinance No. 96-60 and 97-42 included, in part, the following conditions:

- (a) Comply with all stated conditions of approval.
- (b) Secure final subdivision approval within 5 years.
- (c) Prepare an overall circulation plan.
- (d) A new access road, other than by way of Alii Drive, shall be provided prior to final subdivision approval. In lieu of actual construction, the applicant may bond or otherwise assure construction of this road.
- (e) Dedicate land for the Alii Highway right-of-way.
- (f) Provide fair share contribution to mitigate potential regional impacts of:
 - (1) Parks at \$3,490.85/unit for an estimated total of \$1,400,000
 - (2) Police at \$168.40/unit for an estimated total of \$67,000
 - (3) Fire at \$332.61/unit for an estimated total of \$133,000
 - (4) Solid Waste at \$145.62/unit for an estimated total of \$60,000
 - (5) Traffic at \$3,101.68/unit for an estimated total of \$1,240,000 Improvements or facilities may be provided in lieu of the fair share contributions.
- (g) Access improvements to Alii Highway shall meet with Department of Public Works approval.
- (h) All roads within the RS-7.5 zoned lands shall have curbs, gutters, and sidewalks. Underground utilities shall be provided throughout the Project site.
- (i) Improvements to Kuakini Highway shall meet with the approval of the State Department of Transportation.
- (j) Drainage systems as required by Department of Public Works shall be installed.

(k) Method of sewage disposal shall meet with approval of government agencies.

(l) Three archaeological sites, including Kuakini Wall, shall be preserved and a Cultural Resources Management Plan shall be approved prior to final subdivision approval of any portion of the Project site.

(m) Should any unanticipated archaeological sites be found, work shall immediately cease and the appropriate agencies notified.

(n) Requirements of the Department of Water Supply shall be complied with.

(o) All other applicable rules, regulations, and requirements shall be complied with.

Project Description

15. The Project site consists of approximately 169 acres of land within the County's Special Management Area situated between Kuakini Highway and White Sands Beach Estates Subdivision.

16. TKLP is proposing to develop the Project site as the Keauhou View Estates Subdivision, which will consist of approximately 400 single-family residential lots, dwellings and related improvements.

17. The Project site is bisected by the proposed Alii Highway Project. Approximately 156 lots are proposed within the approximately 38 acre area makai of the highway. This area is within the County's RS-7.5 zoned district. The balance of the property, mauka of the proposed Alii Highway, is within the RS-15 zoned district.

18. Underground utilities are proposed for the entire Project. Roadways within the RS-7.5 zoned lands will be improved with curbs, gutters and sidewalks.

19. The first increment of the Project will include the approximately 38 acre area makai of Alii Highway. A total of approximately 156 lots are proposed to be developed within this increment over a period of 3 to 6 years, depending on market conditions. A mix of lots and house and lot packages is being contemplated for development, depending on market demand.

20. The Project's residential development is proposed to be targeted to residents of Kailua-Kona and will be priced consistent with adjacent developments. The RS-7.5 zoned lots within the first increment are expected to be sold between \$60,000 and \$90,000. The RS-15 zoned lots are expected to be sold between \$90,000 and \$150,000, depending on views and amenities.

21. Preliminary subdivision plans for the first increment have been submitted to the Planning Department. Final planning and engineering work for the initial 156 lot increment is proposed to commence upon approval of this SMA Use Permit

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application. Depending on market conditions, residential product could be available for purchase by late 1998 or early 1999.

22. Access to the Project site at its makai boundary is presently available from Queen Kalama Street and Laaloa Avenue, both of which intersect with Alii Drive. Queen Kalama Street has a 50-foot wide right-of-way while Laaloa Avenue has a 60-foot wide right-of-way. Both of these roadways have been dedicated to the County of Hawaii. The Project site also fronts on Kuakini Highway on its mauka boundary. The County's proposed Alii Highway will bisect the Project site and is intended to serve as the County's arterial roadway between Kailua-Kona and Keauhou. Kuakini Highway is part of the State Department of Transportation's Highway System.

23. The primary access to the Project site is proposed to be provided from the County's Alii Highway. Should the construction of Alii Highway be delayed, TKLP is proposing to provide an extension from Laaloa Avenue which will cross the proposed Alii Highway alignment and connect to Kuakini Highway. This will provide an alternative mauka-makai connection between Alii Drive and Kuakini Highway. The location and design of the intersection with Kuakini Highway will meet with the approval of the State Department of Transportation. A Traffic Impact Analysis Report has been prepared as part of the design process to ensure the intersection can accommodate the anticipated traffic.

24. An overall circulation plan for the Project has been approved by the County of Hawaii in accordance with the requirements of Condition C of Ordinance No. 96-60 and Condition D of Ordinance No. 97-42.

25. Condition D of Ordinance No. 96-60 and Condition E of Ordinance No. 97-42 require that a new access road to the Project site other than by way of Alii Drive be provided prior to the granting of final subdivision approval for any portion of the Project site. The conditions further stipulate that in lieu of construction, the applicant may bond the roadway improvements to assure that the roadway can be constructed. It also allows final subdivision approval to be granted upon determination that Alii Highway between Kuakini Highway and Kamehameha III Road has been financially assured and construction contracts executed.

26. TKLP fully intends to comply with the conditions of Ordinance Nos. 96-60 and 97-42, including those conditions related to access. Should Alii Highway be constructed, it will serve as the primary access to the project. If Alii Highway is delayed, an alternative access will be provided in accordance with the conditions of approval of the change of zone ordinances.

27. TKLP is obligated to provide its "fair share" of recreational facilities in accordance with Condition F of Ordinance No. 96-60 and Condition N of Ordinance No. 97-42. These conditions, in part, require the provision of park facilities or the payment of a fee in lieu thereof in the amount of \$3,490.85 per single family dwelling unit.

28. In order to address the recreational needs of its first increment, TKLP is presently proposing that a playground area consisting of approximately one acre be

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provided on the Project site makai of Alii Highway. A three to four acre park is proposed on the Project site on the mauka side of Alii Highway as part of the second increment of the Project. This park is proposed to be improved with a play field large enough to accommodate a full size soccer field. If the County is willing to take over maintenance, Towne is willing to dedicate these areas to the County as public parks. If the lot owners within Keauhou View Estates Subdivision are responsible for maintenance and liability of the parks, use of these areas may be restricted.

Objectives and Policies of Chapter 205A, HRS

29. The Project is consistent with the Coastal Zone Management ("CZM") program's objectives, policies and guidelines as contained in Chapter 205A-2, HRS, and the guidelines set forth in Rule 9-7, Plan.Comm.Rules, relating to the Special Management Area.

30. The CZM recreational resources objectives and policies are focused on government responsibilities to provide coordination and funding for coastal recreational opportunities and to provide accessible and diverse recreational opportunities in the coastal zone management area. The Project site is approximately 600 feet from the shoreline and is separated from the coastal area by Alii Drive as well as the White Sands Beach Subdivision. There are no resources associated with the Project site that would provide unique coastal recreational opportunities. The Project is not inconsistent with the recreational resources objectives and policies of the CZM program.

31. The CZM historic resources objectives and policies provide for the protection of significant archaeological and historic resources through their preservation or through information retention. An archaeological inventory survey of the Project site has been completed and the significant historic sites identified. TKLP is required to preserve these sites, including portions of the Kuakini Wall and a heiau within the Project site. A breach of Kuakini Wall may be required by the County to provide appropriate circulation within the County roadway system. Should this occur, appropriate mitigation, including documentation of the wall section being impacted will be implemented prior to any construction activity. The Project is not inconsistent with the historic resources objectives and policies of the CZM program.

32. The CZM scenic and open space resources objectives and policies provide for the protection of important coastal scenic and open space resources. While the Project site is a significant distance from the shoreline, there are views of the coast from Kuakini Highway. Because of the steep slopes, which exceed 20 percent in grade, the construction of single family residential units will not have a significant adverse impact on coastal views from Kuakini Highway. The construction of underground utilities, as well as the provision of larger lots along Kuakini Highway, will further mitigate any potential visual impact of the Project. TKLP will be making best efforts to minimize alteration of the natural land forms. Roads and lot layouts will be designed to minimize grading. The Project is not inconsistent with the scenic and open space resources objectives and policies of the CZM program.

33. The coastal ecosystems objectives and policies call for the protection of valuable coastal ecosystems from disruption and to minimize adverse effects. At its

nearest point, the Project is located approximately 600 feet from the shoreline and therefore will not have any direct impact on coastal ecosystems. There are no unique plant or animal habitats associated with the Project site, which has long been used for cattle grazing. TKLP will comply with all applicable laws, rules and regulations relating to environmental protection, including clean water, air quality, flood control, and wastewater disposal. The Project is not inconsistent with the coastal ecosystems objectives and policies of the CZM Program.

34. The economic uses objectives and policies are intended to ensure that coastal dependent developments are appropriately planned and developed. The Project is not on the shoreline and therefore has no effect on these objectives and policies. The Project is not inconsistent with the economic uses objectives and policies of the CZM Program.

35. The coastal hazards objectives and policies are intended to minimize impacts to life and property along the shoreline. The Project site is not within a coastal hazard area. The Project site is mauka of the tsunami inundation zone and is not subject to storm wave action or coastal subsidence. The Project site is not within a designated flood way. All Federal, State and County regulations and programs regarding drainage, including the Federal Flood Insurance Program, will be complied with during Project development to minimize any potential coastal flooding from inland projects. The Project is not inconsistent with the coastal hazards objectives and policies of the CZM Program.

36. The objectives and policies relating to managing development apply to government agencies mandated with implementing the CZM program and do not apply to individual projects. The Project is not inconsistent with the managing development objectives and policies of the CZM Program.

37. The objectives and policies relating to public participation apply to government agencies mandated with implementing the CZM program and do not apply to individual projects. The Project is not inconsistent with the public participation objectives and policies of the CZM Program.

38. The objectives and policies relating to beach protection apply to government agencies mandated with implementing the CZM program and do not apply to individual projects. At the nearest point, the Project site is approximately 600 feet mauka of the shoreline. All structures located on the Project site will be situated away from the shoreline area and will not impact any beach resources. The Project is not inconsistent with the beach protection objectives and policies of the CZM Program.

39. The objectives and policies relating to marine resources apply to government agencies mandated with implementing the CZM program and do not apply to individual projects. The Project is not inconsistent with the marine resources objectives and policies of the CZM Program.

County General Plan and Zoning

40. The Hawaii County General Plan was adopted by Ordinance No. 89-142 in November 1989 and provides the long range master plan to assure the coordinated development of the County. The Land Use Pattern Allocation Guide ("LUPAG") Map component of the General Plan represents the document's goals, policies, standards and courses of action to guide the coordinated growth and development of the County. It reflects a graphic depiction of the spatial relationship among various land uses and the expressed policy statements of the document itself. The LUPAG Map, in essence, establishes the basic land use pattern for areas within the County.

41. The Project site is designated for LOW DENSITY and URBAN EXPANSION by the LUPAG Map. Low Density is defined as "single family residential in character, ancillary community and public uses, and convenience type commercial uses." Urban Expansion "allows for a mix of high density, medium density, low density, industrial, and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined."

42. The Project, which will consist of single family residential lots, dwellings and related improvements, is consistent with the General Plan.

43. The Project site is zoned for single family residential use. Under §25-5-3(a)(5), Hawaii County Code, "Dwellings, single family" are permitted uses within the single family residential zoned district. Other permitted uses include neighborhood parks and playgrounds and public uses and structures. In addition, buildings and uses normally considered directly accessory to the permitted use shall also be permitted in the single family residential zoned district.

44. The Project, which will consist of single family residential lots, dwellings and related improvements, is consistent with the existing single family residential zoning.

Ecological and Environmental Effects

45. Unlike many other projects in the SMA, no coastal ecosystems are present on the Project site. The Project site was heavily grazed by cattle and supports only a very few native plants, none of which are cause for concern from an environmental or ecological standpoint. The Project site is poor habitat for native fauna. There are no water features or wetlands supplying habitat for marine, wetland, or shore birds. The archaeological sites located within the Project site are well protected by the existing zoning conditions. The Project site is set well away from the shoreline and will not affect any scenic views, nor will it detract from the open-space resources of the coast.

46. The Project will not have any substantial indirect adverse effects on the coastal zone's ecology and environment. The area makai of the Project is already urbanized, and the Project will not degrade the overall scenic or open space character of this area. The Project's wastewater will be treated in the County sewage system, avoiding impacts to coastal water quality. Every development generates some polluted

runoff or groundwater that is not completely filtered and thus finds its way to the ocean, but the contribution of this Project is similar to that generated by the existing developments makai of the Project, with an added buffer of distance. The receiving waters appear to be healthy and capable of absorbing the Project's slight additional quantities of urban runoff and groundwater at this time and in the foreseeable future with no substantial ecological stress. The traffic generated by the Project is not of such a magnitude as to produce substantial adverse impacts to any resource in the coastal zone. A highway with a substantial amount of traffic, Ali'i Drive, already exists along the entire length of this coastline. Coastal ecosystems, historic sites, open space and scenic resources, beaches, marine resources, coastal ecosystems, and human enjoyment of coastal resources will not be adversely affected in any substantial way by the Project.

47. No substantial adverse cumulative impacts will result from the Project. Cumulative impacts occur when implementation of several projects that individually have limited impacts combine to produce more severe impacts or conflicts in mitigation measures. The adverse effects of the Project on the coastal zone are very limited in severity and geographic scale. They constitute only a minuscule portion of the overall development impacts of North Kona.

48. The effects of the Project on the coastal zone are minor, not substantial. The term "substantial" is synonymous with "significant," a term that has a very specific meaning in environmental analysis. The meaning is derived from various statements in the National Environmental Policy Act of 1970. Generally, an impact is significant if it results in an irrevocable commitment to loss or destruction of any natural or cultural resource, or if it curtails the beneficial uses of the environment. Examples of substantial impacts in the coastal zone are major dredging of coral reefs, nearshore sewage outfalls; zones of large structures that block out coastal views; or depriving the public of reasonable access to or along the shoreline. None of the effects of the Project even approach the scale of impact implied by the term "substantial."

49. In 1992 the segment of Alii Drive south of Laaloa Avenue carried an estimated 6,400 vehicles per day (vpd). The segment of Alii Drive north of Laaloa Avenue carried 15,800 vpd. The State Department of Transportation projects that by 2020 these segments of Alii Drive will carry 16,400 and 17,300 vpd, respectively. The development of the Project site was factored into the model that calculated the 2020 traffic volume. The number of trips generated by the Project will not form a substantial portion of the total traffic on Alii Drive. The effect will be reduced to very minor levels when an alternate access is built mauka of the Project. The traffic generated by the Project will not substantially affect the economic or social welfare and activities of the community, County or State.

50. Although residents of the Project will probably use Magic Sands and Kahaluu Beach Parks, many of them may choose the very realistic option of walking or bicycling to these parks, reducing overcrowding on the roads, entrances and parking lots of these parks. There are many environmental benefits to having people live near where they recreate.

51. Regarding traffic safety, Alii Drive is already sufficiently congested that pedestrians must exercise maximum care when crossing the road. The traffic generated by the Project will not materially change this situation.

52. Magic Sands and Kahaluu Beach Park serve, and are meant to serve, the entire island and all its visitors, not simply those who live on or near Alii Drive. Magic Sands and Kahaluu Beach Park have a client base that goes beyond the neighborhood. People from all over the island, state, and indeed, the whole world use these parks. No matter where in Kona population growth occurs, an increase in the use of these parks will result.

53. Parks are manmade features that allow people to enjoy the resources of the coastal zone. Park overcrowding in itself is not an adverse ecological or environmental impact. Park overcrowding is not an ecological effect - it is the result of the lag time between population growth and government provision of park facilities.

54. The Project will not have any substantial ecological or environmental effect on the values that are to be protected in the coastal zone as mandated by Chapter 205A, HRS, and Rule 9, Plan.Comm.Rules.

55. Any conclusion of law hereafter determined to be a finding of fact is hereby found as a fact.

CONCLUSIONS OF LAW

56. Any finding of fact hereafter determined to be a conclusion of law is hereby made a conclusion of law.

Procedural Rulings

57. At the prehearing conference held by telephone on May 1, 1998, WSTA requested a contested case hearing date in mid-July 1998, stating it needed the time to prepare its case and determine witnesses. TKLP objected to a mid-July 1998 hearing date, noting that its SMA Use Permit application was originally placed on the agenda for the Planning Commission's meeting of April 17, 1998, and that under Rule 4-7(d), Plan.Comm.Rules, an intervenor should be prepared to proceed at the date it is admitted as a party to the proceeding. The Presiding Officer denied WSTA's request for a mid-July 1998 contested case hearing date and scheduled the hearing to commence on May 27, 1998, a date more than five weeks after WSTA was admitted as an intervenor on April 17, 1998.

58. On behalf of TKLP, William L. Moore ("Moore") was offered as an expert witness in the area of land use planning at the contested case hearing on May 27, 1998. Pursuant of Rule 4-5(b), Plan.Comm.Rules, the Presiding Officer permitted Moore to testify as an expert witness in the area of land use planning.

59. On behalf of TKLP, Ron Terry, Ph.d ("Terry") was offered as an expert witness in the area of environmental impact analysis at the contested case hearing on May 27, 1998. Pursuant to Rule 4-5(b), Plan.Comm.Rules, the Presiding Officer

permitted Terry to testify as an expert witness in the area of environmental impact analysis.

SMA Use Permit Criteria

60. An SMA Use Permit is required for the development of the Project.

61. The Planning Commission may approve an SMA Use Permit for the development of the Project upon making the findings required under Rule 9-11(C)(1)-(3), Plan.Comm.Rules.

62. Under Rule 9-11(C)(1), Plan.Comm.Rules, the Planning Commission must find that the Project will not have any significant adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest.

63. Under Rule 9-11(C)(2), Plan.Comm.Rules, the Planning Commission must find that the Project is consistent with the objectives and policies as provided in Chapter 205A, HRS, and the Special Management Area guidelines contained in Rule 9-7, Plan.Comm.Rules.

64. Under Rule 9-11(C)(3), Plan.Comm.Rules, the Planning Commission must find that the Project is consistent with the General Plan, Zoning Code, and other applicable ordinances.

65. The Hearing Officers conclude that the Project will not have a significant adverse environmental or ecological effect. Further, any adverse environmental or ecological effect of the Project will be minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interests.

66. The Hearing Officers conclude that the Project is consistent with the objectives, policies and guidelines of Chapter 205A, HRS, and the Special Management Area guidelines set forth in Rule 9-7, Plan.Comm.Rules.

67. The Hearing Officers conclude that the Project is consistent with the General Plan, the Zoning Code, and the zoning ordinances specifically applicable to the Project site.

DECISION AND ORDER

After review of all of the testimony and evidence, the Report of Contested Case Hearing Officers, Findings of Fact, Conclusions of Law, Decision and Order and the parties' comments and objections thereto filed herein, and the arguments of the parties at the August 20, 1998, hearing, the County of Hawaii Planning Commission hereby grants Special Management Area (SMA) Use Permit No. 385 to allow the subdivision of land, and the development thereon of approximately 400 single-family residential dwelling units and related improvements, on approximately 169 acres of land identified as TMKs:(3)7-7-08:11, 30 & 96 situated between Kuakini Highway and White Sands

Beach Estates Subdivision at Pahoehe 3rd and 4th, Laaloa 1st and 2nd and Kapalaalaea 1st, North Kona, County and State of Hawaii, subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Four historic sites shall be preserved (Kuakini Wall, 4538, 4577, 4583). A preservation plan shall be prepared for these sites (commonly including buffer zones, interim protection measures, and long range preservation measures). This plan must be approved by the County and the State Historic Preservation Division, with the section on the burial reinterment treatment to be reviewed and approved by the Hawaii Island Burial Council. No land alteration shall occur in the vicinity of these sites at least until the buffer zones are agreed to and interim preservation measures are successfully put in place. The State Historic Preservation Division must verify that the plan has been successfully executed, notifying the County Planning Department in writing when this occurs.
3. The applicant, successors or assigns shall be responsible for complying with all conditions of approval of Change of Zone Ordinance Nos. 96-60 and 97-42.
4. Final Subdivision Approval shall be secured in conjunction with the time frames established by the Change of Zone Ordinance Nos. 96-60 and 97-42.
5. A mauka-makai roadway from Alii Drive to Kuakini Highway shall be completed upon 250 lots being developed in the event Alii Highway is not constructed.
6. A drainage study shall be prepared and drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works in conjunction with Final Subdivision Approval.
7. Sewer lines shall be installed within the development to tie in with the Kealakehe Wastewater Treatment Plan, meeting with the approval of the Department of Public Works in conjunction with Final Subdivision Approval.
8. A Solid Waste Management Plan for the development shall be submitted for review and approval to the Department of Public Works prior to the issuance of Final Subdivision Approval. A copy of the approved Plan shall be submitted to the Planning Department for its files.
9. Comply with the archaeological conditions of Change of Zone Ordinance Nos. 96-60 and 97-42. In addition, the implementation of the Cultural Resources Management Plan shall be completed prior to the issuance of permits for any land alteration activities.
10. Comply with all other laws, rules, regulations and requirements of the affected agencies for the proposed development, including those of the Department of Health, Fire Department and the Department of Public Works.

11. Upon compliance with all conditions of approval, the applicant shall provide, in writing, a final status report to the Planning Director.

12. 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.

13. 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 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).

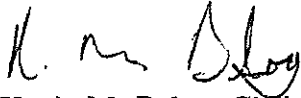
14. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate to revoke this permit.

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.

Christopher Lau, President
Towne-Development of Kona, Inc.
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Should you have any questions, please contact Alice Kawaha of the Planning Department at 961-8288 or Royden Yamasato of the Planning Department West Hawaii Office at 327-3510.

Sincerely,



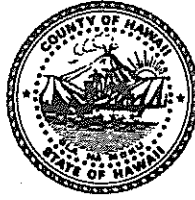
Kevin M. Balog, Chairman
Planning Commission

LTowne01.PC

cc: Stephen J. Menezes, Esq.
James C. Clay, Esq./Steven A. Kornberg, Esq.
Mr. William Moore
Mr. Norman Hayashi
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
DBEDT-Office of Planning, CZM Program (w/Background)
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu

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Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
Z 095 324 121

SEP 10 3 1998

James C. Clay, Esq.
Steven A. Kornberg, Esq.
75-5722 Kuakini Highway, Suite 203
Kailua-Kona, HI 96740

Dear Messrs. Clay and Kornberg:

Special Management Area Use Permit Application (SMA 98-3)

Applicant: Towne-Kona Limited Partnership

Request: Allow for the Development of Approximately 400 Single-Family
Residential Units and Related Improvements

Tax Map Key: 7-7-8:11, 30 and 96

The Planning Commission, at its duly held public hearing on August 20, 1998, voted to approve Special Management Area (SMA) Use Permit No. 385 for the reasons and conditions as outlined in the enclosed letter to the applicant. You may appeal this decision to the Circuit Court of the Third Circuit within thirty (30) days of the date of this letter, which is also the date this letter is being mailed to you.

Should you have questions regarding the above, please contact Alice Kawaha of the Planning Department at 961-8288 or Royden Yamasato of the Planning Department West Hawaii Office at 327-3510.

Sincerely,

A handwritten signature in dark ink, appearing to read "K. M. Balog".

Kevin M. Balog, Chairman
Planning Commission

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Enclosure

cc: West Hawaii Office
Stephen J. Menezes, Esq.
Mr. Christopher Lau
Mr. William Moore
Corporation Counsel

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