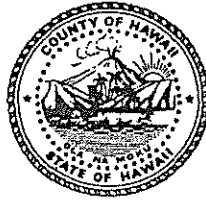


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL

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JAN 07 2002

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

Dear Mr. Lim:

Special Management Area Use Permit Application (SMA 01-005)
Applicant: Kamehameha Investment Corporation
Request: Development of a 25-Unit Single Family Residential Project
(Kuamo'o Estates) and Related Improvements
Tax Map Key: 7-8-10:1 and 65

The Planning Commission at its duly held public hearing on December 6, 2001, voted to approve the above-referenced application. Special Management Area (SMA) Use Permit No. 420 is hereby issued for the development of a 25-unit single family residential project (Kuamo'o Estates) and related improvements. The properties are located at the south end of Ali'i Highway, adjacent to the Kuamo'o Burials site and south of Kona Surf Hotel and Holua at Keauhou condominium development, Keauhou 2nd, North Kona, Hawaii.

Approval of this 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 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

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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 subject properties are a part of the Keauhou Resort Master Plan that was planned for another hotel site. The properties are zoned Resort-750 square feet (V-.75) of land per dwelling unit or separate rentable unit. This Resort zone density would permit approximately 1,100 units. The applicant, however, proposes to develop 25 residential units. This comparatively low density development will reduce many of the potential impacts that may occur with the development of the properties including traffic, sewage generation, and visual impacts.

The proposed 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 applicant is proposing to develop a 25-unit residential subdivision, to be named Kuamo'o Estates, and related improvements. The applicant also proposes to construct a pond system about 1,600 feet in length traversing lengthwise the central portion of the project area, approximately 200 feet inland and parallel to the nearest shoreline. The proposed lots will range in size between 28,000 square feet to 60,000 square feet. No improvements are proposed within the 40-foot shoreline setback area. The project has been planned with sensitivity to the environmental and cultural considerations of the site.

The applicant proposes to construct a pond system with at least three separate interconnected ponds running through the length of and roughly bisecting the property. Two of the ponds will be lined and one pond unlined to allow percolation of water back to the ground water. The pond design will optimize mixing, aeration, and circulation to maintain consistent water quality. Based on this system, it is anticipated that shoreline impacts from this feature will be undetectable. However, a condition will require the applicant to prepare a Water Quality and Benthic Habitat Survey Plan to monitor the

nearshore ocean waters adjacent to the development. The program shall include pre and post-construction testing of the ocean for water quality as well as bi-annual testing of both the pond and nearshore ocean waters.

The project area is overgrown with Kiawe trees with exposed outcropping. It has a rocky coastline consisting primarily of basalt lava ledge one to ten feet above sea level. The project area is adjacent to existing Kona Surf Hotel, Mauna Loa Villas Condominiums, and Kona Country Club golf course developments. The subject properties are not located within an area recognized by the General Plan as an example of Natural Beauty. Therefore, the proposed development will not adversely impact any coastal view plane, scenic or open space resources to the shoreline and coastal ecosystems.

The immediate adjacent land to the southeast is the Kuamo'o Burials site, zoned Open. Lands further south of the subject parcel are vacant lands zoned Agricultural-5 acres (A-5a). The Kona Country Club golf course, zoned Open, abuts the project area's northern boundary. Further to the north are the Kona Surf Hotel development, zoned Resort-750 square feet (V-.75), and the Mauna Loa Villas, Keauhou Punahale and Keauhou Akahi Condominium developments, zoned Multiple Family Residential-2,000 square feet per rentable unit (RM-2).

The applicant proposes to connect to the Heeia Wastewater Treatment Facility via the existing pump station located on the adjacent Kona Golf Course site. The Department of Health (DOH) requires that underground injection systems which receive wastewater or storm run-offs from the proposed development need to address DOH requirements. In addition, the applicant may be required to apply for an Individual NPDES permit if there is any type of process wastewater discharge from the project into State waters. 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.

There are no air quality monitoring stations in the West Hawaii Region. The existing noise generated in the area is from the vehicular traffic on Ali'i Highway. The principal source of short-term air quality impacts associated with the construction of the proposed improvements is expected during construction, especially during grubbing and grading activities. Given the limited nature of the improvements, no long term air and noise quality impacts are anticipated.

Current vegetation is dominated by various grasses and shrubs, including guinea grass, lantana, koa haole. Trees on the project area are primarily Kiawe, a few coconut palms and other species. There are no known rare or endangered plant life or animal species on the project area or in its immediate vicinity.

The proposed development is consistent with the objectives, policies and guidelines of the Special Management Area as provided by Chapter 205A, HRS, and Rule No. 9 of the Planning Commission Rules of Practice and Procedure. These objectives and policies were established to provide guidance for the preservation, protection and development of coastal resources of the State and County. They identify several areas of management concerns including recreational, historic, scenic resources, coastal ecosystems, economic use, coastal hazards, beach protection and marine resources.

The properties are located makai of Ali'i Highway and abut the shoreline. The coastal frontage is approximately 2,000 feet. According to the applicant, there are no recreational sandy public beaches or commonly used ocean access points for swimming or boating along the properties' coastline. Further, while there are no active public recreational areas along the coastline of subject parcels, passive coastal recreational uses, including fishing, are available and will be retained. The applicant proposes to provide a mauka/makai public shoreline access along the south boundary between the project site and the adjacent property proposed for the Hale O Kuamo'o project. Although the applicant proposes to provide a mauka/makai public shoreline access, there should also be assurance for lateral shoreline access within the properties. In order to assure the continuity of public access along the shoreline, non-interference with historic sites, and the provision of facilities related to shoreline access, a condition of approval is included that a shoreline access plan be submitted to and approved by the Planning Director. This condition of approval together with the applicant's intent to provide for shoreline access should assure continued public enjoyment of the coastal area. The subject property is approximately 600 feet makai of Ali'i Highway. The applicant has stated that the 25 single family dwelling units will be covered by the Kuamo'o Estates Covenants, Conditions and Restrictions, which will conform to Zoning Code requirements. Further, design will be low profile and sensitive to tropical architectural design elements. The color scheme for the dwellings are proposed to be of earth tone colors that will blend in with the character of the immediate area. Since the area is adjacent to the Kuamo'o Burial Reserve which is a culturally-sensitive area and zoned Open, the applicant's objective is to create a village-like setting in keeping with the immediate environment. To further maintain this village-like setting, a condition is included that dwelling heights be restricted to a maximum height of 35 feet, in keeping with residential-zoned height limits. The applicant proposes landscaping along the proposed entire roadway system

fronting the proposed lots and surrounding the pond system feature within the proposed subdivision. Therefore, based on the above, the development should not adversely impact viewplanes to and along the shoreline from Ali'i Highway.

According to the applicant, the subject area is used continuously by native Hawaiians for fishing. Because the entire stretch of shoreline is a'a and some areas of pali, this activity is primarily limited to pole fishing. The applicant will continue to provide access to the shoreline subject to regulations whereby fishing would be from 6:00 a.m. to 6:00 p.m. However, those wanting to do night fishing will make arrangements with the Royal Order of Kamehameha I in advance. Access for enjoyment of the shoreline and for fishing will continue unabated. Further, the applicant is prepared to the fullest extent to support all traditional and customary native Hawaiian rights that are appurtenant to the subject property. In addition, if in the future, any other valued cultural, historical, natural resources and/or traditional and customary native Hawaiian rights are discovered in the project area, the applicant will report this matter to the State Department of Land and Natural Resources-Historic Preservation Division and the Planning Commission for review and assessment. Therefore, the proposed development will not adversely impact any recreational, including access to and along the shoreline, visual resources, or scenic or open space resources to the shoreline and coastal ecosystems.

An Archaeological Inventory Survey and Limited Subsurface Testing of approximately 39 acres of 3 parcels was conducted by Cultural Surveys Hawai'i. The survey included the project area and a portion of the adjacent parcel to the south, proposed for the Kuamo'o Cultural Complex. According to the report dated September 2000, a total of 47 sites of varied archaeological significance are present in the surveyed area. Of the 47 sites recorded, it is recommended that 27 sites be subjected to a program of data recovery. These sites include temporary and permanent habitations, agriculture habitations, animal enclosures, storage site, and agricultural complexes. Eight (8) sites are recommended for no further work, as it is believed that no additional scientific data is obtainable from the sites beyond what was acquired during the inventory survey. Those sites include a complex of temporary habitation clearings and trail remnants, complexes of agricultural and temporary habitation features, and other sites. Twelve (12) sites recommended for preservation include 5 burial sites, 5 permanent habitation complexes, one concentration of bait grinders associated with Kahoe'e Village, and a sample of the historic carriage road. Two of the burial sites are located at the southwestern portion of the project area. It is pointed out that the other three burial sites are located on the adjacent property where the applicant proposes to develop the Kuamo'o Cultural Complex. Those burials are believed to be associated with the Kuamo'o Battle of 1819, and are located in the a'a terrain, between the coastline and the Kuamo'o Burial Preserve. According to the applicant, "The probability of encountering additional burials during the data recovery portion of the project is quite high. Future treatment of any

additional burial finds on the property will be done in accordance with a burial treatment plan, subject to review and approval by DLNR and the Hawai'i Island Burial Council." The applicant further stated that it "will ensure that coordination and communication will be made with the Department of Land and Natural Resources, Historic Sites Preservation Office to provide the most appropriate protection of significant features. The buffers to be recommended by the State Historic Preservation Office will be adhered to." The specific treatment for the archaeological features designated for preservation would be determined as part of the archaeological approval process in conjunction with the requirements of Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) and other applicable agencies. The preparation of a data recovery plan and preservation plan and the establishment of buffer zones, interim protection measures and remaining archaeological data recovery still needs to be completed. Therefore, a condition of approval is included stating that the applicant fully implement the approval data recovery plan and preservation plan prior to issuance of Final Subdivision Approval or prior to any approval for any land alteration permits for the proposed development, whichever occurs first.

The Flood Insurance Rate Maps (FIRM) classifies a major portion of the project area as within Zone X, areas determined to be outside the 500-year floodplain. The coastal areas of the parcels are within AE and VE Flood zone areas, with base flood elevation of 15 and 14 feet respectively. A portion of the proposed lots along the coastline will be partially situated within those AE and VE flood zone areas. The applicant has indicated that the development will comply with the requirements of Chapter 27, Flood Control, of the Hawaii County Code. There are no significant drainageways anticipated. While there are no indications of surface water flow on-site, the applicant will abide by all applicable County guidelines for run-off generated by the development. The Department of Public Works has recommended that a drainage study be prepared for review and approval, prior to submittal of plans for subdivision review. Therefore, a condition of approval will be included to comply with this recommendation.

The proposed development is consistent with the County General Plan and Zoning Code. The General Plan document identifies Keauhou-Kahaluu as a Major Resort Area. A major resort area is a self-contained resort destination area which provides basic and support facilities for the needs of the entire development. These areas include uses such as hotels, condominium-hotels. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area for Resort. The Kona Regional Plan Land Use Conceptual Map also designates the project area as Resort. The County zoning is Resort-750 square feet (V-.75) of land per dwelling unit or separate rentable unit. Under this designation, the maximum development potential of the subject property is 1,100 units. The applicant, however, proposes to develop 25 residential units. This comparatively low density development will reduce many of the potential impacts that may occur with the development of the property including traffic

generation, and the visual impacts. This proposed development will compliment the following goals and policies of the Land Use, Single Family Residential and Housing Elements of the General Plan:

LAND USE

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- * Zone urban- and rural- types of uses in areas with ease of access to community services and employment centers and with adequate public utilities and facilities.
- * Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and 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.
- * Zoning requests shall be reviewed with respect to General Plan designation, district goals, regional plans, State Land Use District, compatibility with adjacent zoned uses, availability of public services and utilities, access and public need.

SINGLE-FAMILY RESIDENTIAL

- * To maximize choices of single-family residential lots and/or housing for residents of the County.
- * To provide single-family residential areas conveniently located to public and private services, shopping, other community activities and convenient access to employment centers.
- * Areas shall have basic improvements and amenities necessary for immediate use.
- * Area shall be limited to low-density and medium density residential uses.

HOUSING ELEMENT

- * Attain safe, sanitary and livable housing for the residents of the County of Hawaii.
- * Attain a diversity of socio-economic housing mix throughout the different parts of the County.

- * Maintain a housing supply which allows a variety of choice.
- * Develop better places to live in Hawaii County by creating viable communities with decent housing and suitable living environments for our people.
- * Improve and maintain the quality and affordability of the existing housing stock.
- * Seek sufficient production of new affordable rental and fee-simple housing in the County in a variety of sizes to satisfactorily accommodate the needs and desires of families and individuals.

The development is consistent with the Economic Element of the General Plan in that the proposed development will provide additional and expanded employment opportunities for the residents of the area. The employment opportunities for the proposed development will generate short-term (construction) employment.

ECONOMIC ELEMENT

- * Provide residents with opportunities to improve their quality of life.
- * Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- * The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

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 this request is subject to the following conditions. 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.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. Final Subdivision Approval shall be secured from the Planning Director within five (5) years from the effective date of this permit.
3. Final Plan Approval shall be secured in accordance Final Plan Approval for the proposed development shall be secured from the Planning Director in accordance with Chapter 25-2-70 of the Zoning Code. Plans shall identify existing and proposed structures, vehicular traffic, paved driveway access and parking stalls associated with the proposed use. Landscaping shall also be indicated on the plans in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Plans shall also indicate the location and type of signage for archaeological features located within the project site as may be deemed appropriate by the State Department of Land and Natural Resources-Historic Preservation Division prior to the start of any construction.
4. All dwelling units shall be restricted to a maximum height of 35 feet.
5. A mauka/makai public shoreline access and lateral shoreline access along the entire coastline within the project area shall be provided. A shoreline access plan shall be submitted for review and approval to the Planning Director prior to the submittal of plans for subdivision review or issuance of any land alteration permit, whichever occurs first.
6. The applicant shall prepare a Water Quality and Benthic Habitat Survey Plan to monitor the nearshore ocean waters adjacent to the development due to the construction of ponds. This plan shall include provisions for pre and post-construction testing of the nearshore ocean waters as well as bi-annual testing of both the ponds and nearshore ocean waters.
7. Vehicular access to the project area shall meet with the approval of the Department of Public Works. All roadways within the proposed development shall follow the guidelines incorporated in the Hawaii Statewide Uniform Design Manual for Streets and Highways, and shall meet the requirements of the Department of Public Works.
8. The applicant, its successor or assigns shall meet the requirements of the Fire Department relating to Fire Apparatus Access Roads.

9. A drainage study of the subject property shall be submitted for review and approval to the Department of Public Works, prior to submittal of plans for subdivision review. Drainage improvements, if required, shall be constructed or bonded meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.
10. If required by the Department of Public Works, a flood study of the subject property shall be submitted for review and approval to the Federal Emergency Management Agency (FEMA) for a Letter of Map Change (LOMC), prior to submittal of plans for subdivision review.
11. All earthwork activity, including grubbing and grading, shall conform to Chapter 10 - Erosion and Sedimentation Control, of the Hawaii County Code.
12. The applicant, its successor or assigns shall comply with the requirements of Chapter 27 – Flood Control, of the Hawaii County Code.
13. Sewer lines shall be installed within the development to connect with the Heeia Wastewater Treatment Plant, meeting with the approval of the Department of Environmental Management prior to issuance of Final Subdivision Approval.
14. If applicable, the applicant, its successor or assigns shall comply with the requirements of the Department of Health relating to an Individual NPDES permit and Chapter 23, Hawaii State Department of Health Administrative Rules, Title 1, “Underground Injection Control.”
15. A Solid Waste Management Plan for the development shall be submitted for review and approval to the Department of Environmental Management. A copy of the approved Plan shall be submitted to the Planning Department prior to issuance of Final Subdivision Approval.
16. An Archaeological Data Recovery Plan and Preservation Plan shall be submitted for the review and approval to the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD). Proposed mitigation treatment (preservation in place or disinternment/reinternment) for burial sites within the subject property shall be approved by the Historic Preservation Division’s Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Archaeological Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Subdivision Approval or prior to any approval for any land alteration permits, whichever occurs first.

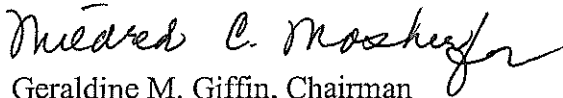
17. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
18. Comply with all applicable laws, rules, regulations and requirements of affected agencies for approval of the proposed development within the subject property, including the Department of Health.
19. 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.
20. 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, 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 or Special Management Area.
 - 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).

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.

Steven S. C. Lim, Esq.
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Should you have any questions, please contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

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