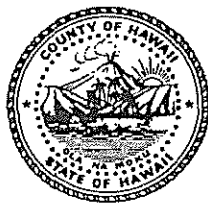


Harry Kim
Mayor



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 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

Special Management Area Use Permit Application (SMA 01-004)
Applicant: Kamehameha Investment Corporation
Request: Establishment of Hale O Kuamo'o Cultural Center and
Related Improvements
Tax Map Key: 7-8-10:Portion of 66

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. 421 is hereby issued for the establishment of Hale O Kuamo'o Cultural Complex and related improvements. The project site is 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 Rule No. 9 relating to 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.

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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 subject property is a part of the Keauhou Resort Master Plan that was planned for park and historic preserve. The property is zoned Open.

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 interests. 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 Hale O Kuamo'o Cultural Complex and related improvements to honor the fallen warriors of the Battle of Kuamo'o. The six (6) structural elements to be erected will be carefully designed to be consistent with the architecture that is sensitive to the significant historical content of the area. These 6 structural elements will include a residence for a full time caretaker approximately 1,200 square feet in size, an office approximately 2,000 square feet in size, an archives building approximately 3,000 square feet in size, two (2) ceremonial halau's, one 3,000 square feet in size and the other 1,500 square feet in size and a pavilion approximately 1,500 square feet in size for the Royal Order of Kamehameha I meetings. There will be approximately 21 off-street parking stalls, which will be in compliance with the applicable requirements of the Zoning Code. The color scheme for the proposed structures will be of earth tone colors to be consistent with the Historical content of the area. All structural elements are proposed to be constructed approximately 100 feet mauka of the certified shoreline. Upon approval of the SMA application, the applicant proposes to create a two (2) lot subdivision, one lot for the area for the Lekeleke Burial Grounds and the second lot to be leased to the Royal Order of Kamehameha I who will be the caretakers of the proposed Hale O Kuamo'o Project.

The project area is located at the end of Ali'i Highway. It consists of approximately 8.5 acres and situated on the west side of the property and existing public shoreline access path. It has a rocky coastline consisting primarily of basalt lava ledge

one to ten feet above sea level. The frontage of the project area is planted with mature coconut trees while the remaining area is partially overgrown with Kiawe trees with exposed outcropping. Proposed landscaping within the project area includes trees that will screen most of the proposed structures. Due to the existing coconut tree plantings along the frontage of the project area, proposed landscaping and the proposed 100 foot structural setback from the certified shoreline, 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 property to the northwest is zoned Resort (V-.75), overgrown primarily with Kiawe trees, and vacant of any uses. The Kona Country Club golf course, zoned Open, is situated to the north across the road. Further to the northwest 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 unit (RM-2). Immediate lands to the east and south of the property are zoned Agricultural (A-5a) and are vacant lands.

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.

No adverse impacts on water quality are expected to be generated by the proposed development. Any potential runoff or discharge generated by the proposed development which could reach ocean waters can be handled by on-site drainage improvements meeting with the approval of the Department of Public Works and/or Department of Health. Potential negative impacts on coastal waters during site preparation and construction can be mitigated through compliance with existing ordinances and regulations.

There are no air quality monitoring stations in the West Hawaii Region. The existing minimal noise generated in the area is from the vehicular traffic at the end of 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. However, these temporary, short-term impacts generated during the construction phase can be mitigated by existing construction regulations. Therefore, given the nature of the improvements, no long-term air and noise quality impacts are anticipated.

The project area is designated as unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH), and its soil is classified as "E" or Very Poor for agricultural purposes. There are no known rare or endangered plant life or animal species on the project area or in its immediate vicinity. Thus, no impacts are anticipated in this regard.

The proposed development is consistent with the objectives and policies, and Special Management Area guidelines as provided by Chapter 205A, HRS and Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The guidelines 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 and open space resources, coastal ecosystems, economic use, coastal hazards, beach protection and marine resources. The property is located makai of Ali'i Highway and abuts the shoreline. According to the applicant, there are no recreational sandy public beaches or commonly used ocean access points for swimming or boating along the property's coastline. Further, while there are no active public recreational areas along the coastline of the subject parcel, passive coastal recreational uses, including fishing, are available and will be retained. An existing 14-foot wide mauka/makai public shoreline access path traverses the property and will be retained for public use. It leads toward the south of the property and separates the project area from the Lekeleke Burial Grounds. This public access path is improved with laid aggregates, and a 3-foot high stonewall borders along the entire eastern side (burial side) of the access pathway. It should be pointed out that there should also be assurance for lateral shoreline access along the entire shoreline of the property. 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. Therefore, the proposed development is not anticipated to have any significant adverse impacts on coastal ecosystems or public access along the shoreline.

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.

The Lekeleke (Kuamo‘o) Burial Grounds is listed on the National and State Registers of Historic Places as well as in the General Plan document. It is located on the remaining 20-acre portion (east side) of the property. 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 northwest where the applicant proposes to develop a 25-unit Kuamo‘o Estates Subdivision. 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 properties proposed for the Kuamo‘o Estates project. The other three burial sites are believed to be associated with the Kuamo‘o Battle of 1819, and are located on the subject parcel in the a‘a‘ terrain, between the coastline and the Kuamo‘o Burial Preserve. Specifically, two of the burials are located on the southwestern portion of the parcel, makai of the existing public shoreline access. The other is located on the northwestern portion in the vicinity of the proposed cultural center. 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 implement the approved 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. It should be required that a qualified archaeologist monitor all construction activities for the proposed development.

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 flood plain. The portion of the property along the coastline is within the AE and VE Flood zone areas, with base flood elevation of 15 and 14 feet, respectively. The applicant has indicated that the development will comply with the requirements of Chapter 27, Flood Control, of the Hawaii County Code. 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. There are no significant drainageways anticipated. 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. Further, although the project will be constructed in an area that is subject to tsunami inundation, high surf or flooding, the proposed development will not intensify coastal hazards at the project site as the proposed structures will be constructed about 100 feet inland from the certified shoreline.

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 Open Space. The Kona Regional Plan Land Use Conceptual Map and Zoning Map also designate the project area as Open. This type of designation includes uses for recreational and historic sites purposes. The proposed development would complement the following goals and policies of the General Plan:

Historic Sites

- Protect and enhance the sites, buildings and objects of significant historical and cultural importance to Hawaii.
- Access to significant historic sites, buildings and objects of public interest should be made available.
- The County of Hawaii shall require both public and private developers of land to provide a historical survey prior to the clearing or development of land when there are indications that the land under consideration has historical significance.
- The County of Hawaii shall encourage the restoration of significant sites on private lands.

Recreation

- Provide a wide variety of recreational opportunities for the residents and visitors of the County.
- Maintain the natural beauty of recreation areas.
- Provide a diversity of environments for active and passive pursuits.
- The County of Hawaii shall improve existing public facilities for optimum usage.
- Recreational facilities in the County shall reflect the natural, historic, and cultural character of the area.
- The use of land adjoining recreation areas shall be compatible with community values, physical resources and recreation potential.
- Public access to the shoreline shall be provided in accordance with an adopted program of the County of Hawaii.

Natural Resources and Shoreline

- Provide opportunities for the public to fulfill recreational, economic, and educational needs without despoiling or endangering natural resources.

- Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.
- Protect and effectively manage Hawaii's open space, watersheds, and natural areas.
- Ensure that alterations to existing land forms and vegetation, expect crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.
- The shoreline shall be protected from the encroachment of man-made improvements and structures.

Environmental Quality

- Maintain and, if feasible, improve the existing environmental quality of the island.
- The County of Hawaii shall take positive action to further maintain the quality of the environment for residents both in the present and in the future.

Open Space

- Provide and protect open space for the social, environmental, and economic well-being of the County of Hawaii and its residents.
- Protect designated natural areas.
- Open space in the County of Hawaii shall reflect and be in keeping with the goals, policies, and standards set forth in the other elements of the General Plan.

The subject property is zoned Open by the Hawaii County Code. Under this zoning designation, permitted uses include heiaus, historical areas, structures and monuments. The proposed development will enhance the historical value of the area, and therefore, meet the historic resource objective of the Special Management Area.

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

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Subdivision Approval of the proposed lots shall be secured from the Planning Director within five (5) years from the effective date of this permit.
3. Construction of the proposed development shall be completed within five (5) years from the date of Final Subdivision Approval. Prior to construction, Final Plan Approval shall be secured in accordance with Chapter 25, Zoning Code. Plans shall identify all existing and proposed structures, proposed driveway, parking stalls, landscaping and lighting associated with the development.
4. A mauka/makai public shoreline access and lateral shoreline access along the entire coastline within the property 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.
5. Vehicular access to the project area shall meet with the approval of the Department of Public Works.
6. A drainage study of the project area 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.
7. If required by the Department of Public Works, a flood study of the project area 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.
8. All earthwork activity, including grubbing and grading, shall conform to Chapter 10 - Erosion and Sedimentation Control, of the Hawaii County Code.
9. The applicant, its successor or assigns shall comply with the requirements of Chapter 27 - Flood Control, of the Hawaii County Code.

10. 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.
11. 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 11, "Underground Injection Control."
12. 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 a Certificate of Occupancy.
13. 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.
14. 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.
15. Comply with all applicable laws, rules, regulations, and requirements of affected agencies, including the Department of Water Supply and State Department of Health for the proposed development.
16. 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.

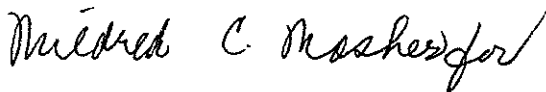
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17. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or 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, Zoning Code or the Special Management Area guidelines.
 - 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.

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

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lkicsma01-004pc

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