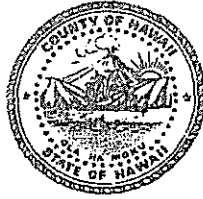


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

Mr. Richard Koob
RR2 Box 4500
Pahoa, HI 96778

Dear Mr. Koob:

Special Management Area Use Permit Application (SMA 02-005) ✓
Special Permit Application (SPP 02-032)
Request: Establishment of a 13-Unit Kalani Kai Arts, Agriculture
and Wellness Education Retreat
Applicant: Richard Koob
Tax Map Key: 1-2-9:29

The Planning Commission at its duly held public hearing on November 15, 2002, voted to approve the above-referenced applications. Special Management Area (SMA) Use Permit No. 427 and Special Permit No. 1186 are hereby issued for the establishment of a 13-unit Kalani Kai arts, agriculture and wellness education retreat and related facilities on an approximately 14.94-acre portion of a 94.69-acre parcel in the State Land Use Agricultural District. The property is located adjacent (west) to the existing Kalani Honua Facility, north (mauka) of Kalapana-Kapoho Highway (Route 137), and one mile east of Kalapana Sea View Estates Subdivision, Kamā'ili and Ke'eke'e, Puna, Hawai'i.

Approval of the requests is based on the following:

Special Management Area Use Permit

The applicant proposes to develop and operate a Kalani Kai Arts, Agriculture and Wellness Education Retreat, which, as amended, consists of 13 separate haies, accessory buildings such as the spa, support, and pool building; an assembly/community center; an entrance kiosk; a greenhouse and agricultural areas. The applicant initially proposed 20 separate haies. According to the floor plan for each hale unit, the first floor consists of 4 bedrooms and recreation room, and the second floor consists of a women's dressing room with bathroom, men's dressing room with bathroom/utility room, and open living room with crafts supplies area. The hale unit would accommodate two guests, a faculty, and a staff member. As proposed, the number of guest rooms, excluding the staff room, in each hale unit would be considered as 3 guest rooms. Thereby, the total number of guest rooms for the project amounts to 39 guest rooms.

02911 AMJ
DEC 20 2002

Mr. Richard Koob

Page 2

The proposed hale units are transient lodging accommodations and therefore, considered to be a lodge. The Zoning Code defines "Lodge" as a building or group of buildings, under single management, containing transient lodging accommodations without individual kitchen facilities, and no more than forty guest rooms or suites, and generally located in agricultural, rural or other less populated areas. This amended project will not exceed the maximum 40 guest rooms allowed by the Zoning Code. Therefore, the Planning Director is recommending that no more than thirteen (13) hale units with no individual kitchen facilities be approved.

As represented in the applications and amended site plan, the proposed retreat project site will encompass approximately 14.94 acres of the entire 94.69-acre property. Portions of the remaining 79.79 acres will be utilized for the farming/agricultural areas and associated facilities, while the other portions will remain in its natural forest.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), relating to Coastal Zone Management Program, and Rule No. 9 Rules and Regulations of the County of Hawai'i, relating to Special Management Area, 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 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. According to the applicant, "The concept of this retreat is to enable guests to revitalize and re-create their lives through: (a) a closer relationship and appreciation for the 'āina (the land, literally 'that which nurtures'); (b) the compassionate, healthful connection with self and others that is experienced in wellness modalities; and (c) the spirit and celebration of life enriched with artistic and cultural expression." This Kalani Kai project will be independent of, but complementary of, the adjoining Kalani Honua Arts and Agriculture Education Farm that was co-founded by the applicant in 1975. Due to increase student participation and visitation to the area at Kalani Honua, the applicant wants to develop similar programs and facilities on the subject property. The proposed arts, agriculture and wellness education retreat will integrate with proposed agricultural activities within the property and within its operations and programs. Portions of the remaining 79.79 acres will be utilized for the farming/agricultural areas and associated facilities, while the other portions will remain in its natural forest. At least 6 acres will be intensively cultivated with the Hawaiian medicinal and food plants. More specifically, the applicant will establish a pasture, fruit, vegetable and herbal gardens, botanicals, and orchard as well as other agricultural

plantings within the property. The overall concept of the proposed retreat is to enable guests to learn and experience the cultivation of agricultural practices and the benefits of traditional Hawaiian food and medicinal herbs, as well as spiritual wellness through a series of "hands-on" programs in a non-urban setting. The agricultural products grown on-site will be served to guests while the Hawaiian medicinal herbs would be used as part of the retreat's educational and wellness programs. It would emphasize traditional Hawaiian and other wellness modalities, wholesome food and medicinal herbs, and cultural expressions, including yoga, hiking and other outdoors activities.

The County's Special Management Area boundary line meanders within the front portion of the property, about 500 feet from the shoreline and a depth of approximately 200-400 feet from the Kalapana-Kapoho Road. The property is approximately 100 feet from the shoreline at its closest point, inclusive of the 50-foot road right-of-way. The proposed kiosk will be the only structure located within the Special Management Area at a minimum of 30 feet from the Kalapana-Kapoho Road, while all other proposed structures will be situated more than 300 feet mauka of the Kalapana-Kapoho Road and outside of the Special Management Area. However, the proposed development must be reviewed cumulatively for any substantial adverse environmental impact.

A botanical survey of the property was conducted in 1996 by Archaeological Consultants of the Pacific, Inc. (D. Kyle Latinis, M.A., James R. Moore, B.S., and Joseph Kennedy, M.A.). The findings reveal that none of the plants found on the site or general area are on the threatened and endangered species list. Introduced fauna species were primarily observed on the property; although at times, the 'Io hawk and the Pue'ow owl were observed in the area.

The principal source of short-term air and noise quality impacts associated with the construction of the proposed project 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 adhering to the requirements of the State Department of Health's regulations relative to noise and emissions of fugitive dust. Therefore, given the nature of the improvements, no long-term air and noise quality impacts are anticipated.

The abutting parcel to the east is the existing 19-acre Kalani Honua complex, which secured a Special Permit to establish an arts and agriculture education farm. The activities at the Kalani Honua site has been in operation for over 15 years and will complement similar activities proposed for the project. Further east, there are 3-acre parcels zoned A-3a with scattered dwellings. Lands to the north and west are similarly zoned A-3a and consist of vacant 41-acre parcels and a 125-acre State-owned parcel, respectively. A 17±-acre coastal parcel also owned by the State is situated to the south of the property and is designated in the Conservation District. The 125-acre State-owned

parcel, approximately 1,000 feet in width, separates the subject property from the Kalapana Sea View Estates Subdivision that lies to the west of the State parcel. Further west, there are the Puna Beach Palisades and Kehena Beach Estates Subdivisions. Those three subdivisions were created as residential size lots and are primarily in residential uses.

The proposed development is consistent with the objectives and policies, and Special Management Area (SMA) 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 County's Special Management Area boundary line meanders within the front portion of the property, about 500 feet from the shoreline and a depth of approximately 200-400 feet from the Kalapana-Kapoho Road. The property is approximately 100 feet from the shoreline at its closest point, inclusive of the 50-foot road right-of-way. The near rectangular shaped 94.69-acre parcel has a frontage of approximately 1,898± feet along the Kalapana-Kapoho Road with a depth of about 1/2 mile.

The proposed kiosk will be the only structure located within the Special Management Area at a minimum of 30 feet from the Kalapana-Kapoho Road, while all other proposed structures will be situated more than 300 feet mauka of the Kalapana-Kapoho Road and outside of the Special Management Area. Some plantings of the native kamani, kou, milo and hau trees will occur within the SMA area. However, the proposed development must be reviewed cumulatively for any substantial adverse environmental impact. Given that a major portion of the property frontage will be retained in its natural vegetation and the distance of the structures from the road, it is anticipated that there will not be any mauka visual impacts. With appropriate perimeter open space and natural forest buffers, the potential visual as well as noise impacts would be minimized to the surrounding area. There is no identified mauka-makai public shoreline access, recreational resources, scenic and open space preserves, or other natural and environmental resources that would be impacted by the proposed project. It is pointed out that access to the shoreline is available from the Kalapana-Kapoho Road.

The Flood Insurance Rate Map (FIRM) classifies the property as within Zone X, areas determined to be outside the 500-year flood plain. 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 project will be constructed in an area that is not subject to tsunami inundation, high surf or flooding; and thus, the proposed development will not intensify coastal hazards and beach erosion, nor impact the coastal ecosystems, and marine resources.

County water system is not available in the area. The applicant intends to utilize an existing on-site 37,000 gallon storage water tank next to the water well for non-potable uses. An existing 10,000 gallon storage tank will be used for potable water (trucked from County water system) for the initial needs, and additional water storage will be provided when needed. Bottled water will also be provided to the guests and employees. Non-potable water from the existing on-site well and/or conventional catchment systems will be used for irrigation and wastewater systems.

There is no municipal wastewater system in the area. The applicant intends to construct aerobic septic systems with leach fields to service the wastewater needs of the proposed project. The applicant intends to comply with the requirements of the State Department of Health. 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. Any potential negative impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing ordinances and 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.

Archaeological Consultants of the Pacific, Inc. also conducted an archaeological inventory survey including subsurface testing in 1996 for the 94-acre parcel. The findings of the survey determined that the property may have been part of the Lower Puna Field System, an intensified dryland agricultural system. The findings also identified a heiau (Site 21143) and a cemetery (Site 2539). Thus, the survey report recommended that a Preservation Plan and a Burial Treatment Plan be prepared in accordance with Federal, State, and County policies. By letter dated July 17, 1998, the State Historic Preservation Division stated that the preservation plan for the burial site #2539 is acceptable, and that a 50-foot construction and permanent buffer zone is adequate. The applicant proposes to provide access easement to families associated with the burial site. In its January 4, 2000 letter, said agency also found the proposed preservation measures for the heiau site #21193 acceptable. The heiau site will be protected by a 10 meter wide buffer zone, maintaining the existing coconut grove adjacent to the site and the existing path, and no building activity will occur on the property that could affect the integrity of this site. The applicant intends to implement the buffer zones as required to protect the Burial Site and the Heiau Site, and therefore, meet the historic resource objective of the Special Management Area. At present, there is no evidence of traditional and customary Native Hawaiian rights being practiced on the property. Therefore, no feasible action is necessary to protect these rights.

The proposed development is consistent with the County General Plan and Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates

the subject property as well as the surrounding area as Orchards. This designation is characterized as those agricultural lands which though rocky in character and content support productive macadamia nuts, papaya, citrus and other similar agricultural products. Approval of the subject request will be consistent with the following goals and policies of the Land Use and Economic Elements of the General Plan:

Land Use Element

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- Protect and encourage the intensive utilization of the County's important agricultural lands.

Economic Element

- The County shall assist the expansion of the agricultural industry, especially diversified agriculture, through the protection of important agricultural lands, capital improvements and other programs, and continued cooperation with appropriate State and Federal agencies.
- The County shall strive for diversity and stability in its economic system.
- The County of Hawai'i shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

As previously stated, the proposed retreat will integrate proposed agricultural activities within the property and within its operations and programs. The overall concept of the proposed retreat is to enable guests to learn and experience the cultivation of agricultural practices and the benefits of traditional Hawaiian food and medicinal herbs, as well as spiritual wellness through a series of "hands-on" programs. The agricultural products grown on-site will be served to guests while the Hawaiian medicinal herbs would be used as part of the retreat's educational and wellness programs. Through its proposed programs, the applicant has demonstrated its commitment to conduct agricultural activities in a manner consistent with the objectives of the General Plan by blending together two distinct uses that will mutually benefit each other, yet preserve the agricultural character of the project site and the surrounding community.

Approval of the proposed retreat will be reflected as a commitment by the County to seek new directions in the type of industries, economic opportunities, and use of its resources. The County must consider various non-agricultural options that could have a secondary, beneficial effect upon a landowner's ability to cultivate their land. The project

site provides an excellent case-in-point. The applicant will establish vegetable, fruit and herb gardens as well as other agricultural plantings within the subject property that will be incorporated into the healing and wellness experiences being offered by the proposed retreat. In the final analysis, approval of the proposed retreat will promote the use of agricultural lands within the project site rather than preserving the current vacant condition of the land.

The subject property is designated Agricultural by both the State and County, which permits the various agricultural activities that the applicant proposes to develop on the subject property. It is pointed out that there is also a Special Permit application that is concurrently being processed for the proposed development.

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. The proposed development shall be limited to a maximum of forty (40) guest rooms, exclusive of the staff rooms.
3. The proposed development shall not exceed thirteen (13) hale units. There shall be no individual kitchen facilities within the hales.
4. The applicant shall complete the development and operate all of its related facilities and activities in keeping with substantial representations made in the applications and as amended by the November 12, 2002 letter.
5. The construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to the start of construction, Final Plan Approval for the proposed building and related improvements shall be secured from the Planning Director in accordance with the Zoning Code pertaining to Plan Approval. Plans shall identify existing and/or proposed structures, signage, fire protection measures, proposed parking areas, driveway and interior roadways, lighting and other improvements associated with the

proposed use. The parking areas and driveways to all the proposed haies will consist primarily of hard-packed gravel and red cinder surface in keeping with the natural environment. The driveways will be 20 feet wide to accommodate emergency vehicles. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. The natural forest and native species appropriate to the area shall be incorporated into the landscaping where possible.

6. Drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
7. All earthwork activity, including grubbing and grading, shall conform to Chapter 10 - Erosion and Sedimentation Control, of the Hawai'i County Code.
8. The applicant shall prepare and submit a Solid Waste Management Plan to the Department of Environmental Management for review and approval. A copy of the approved plan shall be submitted to the Planning Department prior to the issuance of a Certificate of Occupancy for any structures within the project site.
9. A copy of the approved Preservation Plans for the Burial Site #2539 and Heiau Site #21193 and its acceptance letter from the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval or prior to any approval for any land alteration permits, whichever occurs first.
10. 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.
11. If applicable, the applicant shall comply with the requirements of the Department of Health relating to Chapter 10, Public Swimming Pools, and Chapter 12, Food Establishment Sanitation.
12. A septic system shall be established in compliance with Department of Health requirements. No cesspools shall be permitted for the proposed development.
13. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed development.

14. 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.
15. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
16. 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).

Special Permit

In considering a Special Permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits require that the proposed use:

- a. Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and

- b. Would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

In addition to the above, the Planning Commission must also find that the proposed use conform to the following criteria:

- (A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- (B) The desired use shall not adversely affect surrounding properties;
- (C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- (F) The proposed use will not substantially alter or change the essential character of the land and the present use; and
- (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

Through the Special Permit process, certain uses may be allowed that are not normally permitted within the State Land Use Agricultural District. However, when the proposed use is reviewed under the required Special Permit criteria, consideration should be given as to whether the proposed use can be more appropriately established on existing State Land Use Urban lands within the appropriate zoned districts. Establishing the proposed use in an appropriate zoned district is preferable to removing existing agricultural zone lands from their present uses, and proposing changes that would affect the existing land use pattern or the character and ambiance of the existing area and surroundings. Further, the Special Permit process should be considered as an option for certain unusual and reasonable uses only if the proposed uses meet the above criteria.

The applicant proposes to develop and operate a Kalani Kai Arts, Agriculture and Wellness Education Retreat, which, as amended, consists of 13 separate haies, accessory buildings such as the spa, support, and pool building; an assembly/community center; an entrance kiosk; a greenhouse and agricultural areas. According to the floor plan for each

hale unit, the first floor consists of 4 bedrooms and recreation room, and the second floor consists of a women's dressing room with bathroom, men's dressing room with bathroom/utility room, and open living room with crafts supplies area. The hale unit would accommodate two guests, a faculty, and a staff member. As proposed, the number of guest rooms, excluding the staff room, in each hale unit would be considered as 3 guest rooms. Thereby, the total number of guest rooms for the project amounts to 39 guest rooms.

The proposed hale units are transient lodging accommodations and therefore, considered to be a lodge. The Zoning Code defines "Lodge" as a building or group of buildings, under single management, containing transient lodging accommodations without individual kitchen facilities, and no more than forty guest rooms or suites, and generally located in agricultural, rural or other less populated areas. This amended project will not exceed the maximum 40 guest rooms allowed by the Zoning Code. Therefore, the Planning Director is recommending that no more than thirteen (13) hale units with no individual kitchen facilities be approved.

As represented in the applications and amended site plan, the proposed retreat project site will encompass approximately 14.94 acres of the entire 94.69-acre property. Portions of the remaining 79.79 acres will be utilized for the farming/agricultural areas and associated facilities, while the other portions will remain in its natural forest.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (HRS), as amended. In recognizing that lands within the agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. In addition, the State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The subject property is situated within the State Land Use Agricultural District and County's Agricultural-3 acres (A-3a) zoned district. According to the applicant, "The concept of this retreat is to enable guests to revitalize and re-create their lives through: (a) a closer relationship and appreciation for the 'āina (the land, literally 'that which nurtures'); (b) the compassionate, healthful connection with self and others that is experienced in wellness modalities; and (c) the spirit and celebration of life enriched with artistic and cultural expression." This Kalani Kai project will be independent of, but

complementary of, the adjoining Kalani Honua Arts and Agriculture Education Farm that was co-founded by the applicant in 1975. Due to increase student participation and visitation to the area at Kalani Honua, the applicant wants to develop similar programs and facilities on the subject property. Portions of the remaining 79.79 acres will be utilized for the farming/agricultural areas and associated facilities, while the other portions will remain in its natural forest. The proposed arts, agriculture and wellness education retreat will integrate with proposed agricultural activities within the property and within its operations and programs. At least 6 acres will be intensively cultivated with the Hawaiian medicinal and food plants. More specifically, the applicant will establish a pasture, fruit, vegetable and herbal gardens, botanicals, and orchard as well as other agricultural plantings within the property. The overall concept of the proposed retreat is to enable guests to learn and experience the cultivation of agricultural practices and the benefits of traditional Hawaiian food and medicinal herbs, as well as spiritual wellness through a series of "hands-on" programs in a non-urban setting. The agricultural products grown on-site will be served to guests while the Hawaiian medicinal herbs would be used as part of the retreat's educational and wellness programs. It would emphasize traditional Hawaiian and other wellness modalities, wholesome food and medicinal herbs, and cultural expressions, including yoga, hiking and other outdoors activities. The agricultural cultivation would be the major component of the program and would be integrated into the retreat operations. To ensure that agricultural activities are established on the subject property, a condition of approval has been included that the applicant submit an agricultural use plan for approval by the Planning Director.

Thus, development of the proposed project will not displace any agricultural activity nor have a significant adverse effect on the County's agricultural land inventory. It is therefore determined that the proposed use is an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the effectiveness and objectives of Chapter 205, HRS, as amended.

The desired use shall not adversely affect surrounding properties. This near rectangular shaped 94.69-acre parcel has a frontage of approximately 1,898± feet along the Kalapana-Kapoho Road with a depth of about 1/2 mile. There is an existing 6,600 square foot greenhouse, a water well and storage tanks, and some agricultural cultivation. A farm dwelling and two support sheds are presently under-construction. The proposed kiosk will be located at a minimum of 30 feet from the Kalapana-Kapoho Road, while all other proposed structures will be situated more than 300 feet mauka of the Kalapana-Kapoho Road.

The abutting parcel to the east is the existing 19-acre Kalani Honua complex, which secured a Special Permit to establish an arts and agriculture education farm. The activities at the Kalani Honua site has been in operation for over 15 years and will complement similar activities proposed for the project. Further east, there are 3-acre

parcels zoned A-3a with scattered dwellings. Lands to the north and west are similarly zoned A-3a and consist of vacant 41-acre parcels and a 125-acre State-owned parcel, respectively. A 17±-acre coastal parcel also owned by the State is situated to the south of the property and is designated in the Conservation District. The 125-acre State-owned parcel, approximately 1,000 feet in width, separates the subject property from the Kalapana Sea View Estates Subdivision that lies to the west of the State parcel. Further west, there are the Puna Beach Palisades and Kehena Beach Estates Subdivisions. Those three subdivisions were created as residential size lots and are primarily in residential uses.

The principal source of short-term air and noise quality impacts associated with the construction of the proposed project 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 adhering to the requirements of the State Department of Health's regulations relative to noise and emissions of fugitive dust. Therefore, given the nature of the improvements, no long-term air and noise quality impacts are anticipated.

Given that a major portion of the property frontage will be retained in its natural vegetation and the distance of the structures from the road, it is anticipated that there will not be any mauka visual impacts. With appropriate perimeter open space and natural forest buffers, the potential visual as well as noise impacts would be minimized to any surrounding homes. Thus, given the location, scope and nature of the proposed activities, it is not expected that the proposed project would create significant adverse impacts to surrounding properties. Finally, the Planning Department has not received to date any written objections from the community regarding the proposed project.

Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. As previously stated, the property has approximate 1,898± feet frontage along the Kalapana-Kapoho Road. It is located along and mauka of the road, which has an approximately 50-foot wide right-of-way with an approximate 19-foot pavement. There is a 12-foot wide paved driveway on the adjoining property leading to the existing Kalani Honua development. The applicant intends to utilize this driveway as a common access to the project site. A roadway system will meander throughout the subject property to provide access to the various haies and agricultural/farming areas. The applicant intends to provide 20-foot wide driveways that would be able to accommodate emergency vehicles. Due to the nature of the use as an educational retreat integrated with agricultural activities, where groups stay on-site for a period of time, it is not anticipated that significant traffic will be generated. Potential roadway impacts will be minimal since the existing and projected volume of traffic for the use is intended to be in-groups. Therefore, it is anticipated that the proposed use will not result in a significant increase in

regional traffic. Parking shall be available on site and access shall meet with Department of Public Works requirements.

County water system is not available in the area. The applicant intends to utilize an existing on-site 37,000 gallon storage water tank at the water well for non-potable uses. An existing 10,000 gallon storage tank will be used for potable water (trucked from County water system) for the initial needs, and additional water storage will be provided when needed. Bottled water will also be provided to the guests and employees. Non-potable water from the existing on-site well and/or conventional catchment systems will be used for irrigation and wastewater systems.

There is no municipal wastewater system in the area. The applicant intends to construct aerobic septic systems with leach fields to service the wastewater needs of the proposed project. The applicant has stated that he will comply and meet the requirements of the State Department of Health with regards to wastewater system. If applicable, the applicant will comply with Chapter 10 (Public Swimming Pools) and Chapter 12 (Food Establishment Sanitation) of the State Department of Health's Rules for the proposed project. A condition of approval will be included to comply with the Department of Health's requirements.

According to the Flood Insurance Rate Map (FIRM), the property is designated as Zone X, areas determined to be outside the 500-year flood plain. 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 project will be constructed in an area that is not subject to tsunami inundation, high surf or flooding; and thus, the proposed development will not intensify coastal hazards and beach erosion, nor impact the coastal ecosystems, and marine resources.

Police and Fire services are available to the site. These services are from the towns of Pāhoa or Kea'au, approximately 12 and 20 miles away, respectively. According to the Fire Department's comments, the applicant would be required to provide for fire apparatus access road, including turning radius and turnarounds, and water supply for fire protection purposes. A condition of approval will be included to mitigate those concerns and comply with the Fire Department's requirements. All other essential utilities and facilities are available to support the proposed use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. In the 1960s and 1970s, the State's agricultural district boundaries and regulations were first established and subsequently amended pursuant to Chapter 205, Land Use Commission, Hawai'i Revised Statutes. The State Land Use Commission was created in 1961; the interim regulations and temporary district boundaries became effective in 1962; and subsequently the Regulations and Land Use

District Boundaries became effective in August 1964. The State and the County, through its land use laws, have the fiduciary responsibility of protecting its important agricultural lands located in limited quantities throughout the State. However, the protection of these lands cannot be accomplished without consideration of non-agricultural uses that, when combined, creates a mutually beneficial relationship that enhances the ability of an entity to utilize these important agricultural lands in a feasible manner. The County must consider various non-agricultural options that could have a secondary, beneficial effect upon a landowner's ability to cultivate their land. The applicant will establish vegetable, fruit and herb gardens and other agricultural uses within the property that will be incorporated into the healing and wellness experiences being offered by the proposed retreat. In the final analysis, approval of the proposed retreat will promote the use of agricultural lands within the project site rather than preserving the current vacant condition of this land.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The subject property is situated within the State Land Use Agricultural District and County's Agricultural zoned district. The project site will encompass approximately 14.94 acres with soils classified as "E" or Very Poor for machine tillability by the Land Study Bureau, and "Other Important Agricultural Land" by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. The soils are of the Malama Series that are used for pasture, orchards and woodland. However, the applicant has indicated that some agricultural activities can be produced on the land. While this particular criteria for approval of a Special Permit seeks to utilize "unsuitable" agricultural lands for non-agricultural types of uses, the Planning Department feels that certain non-agricultural uses may be appropriate on lands suitable for agriculture. As discussed in the previous paragraph, the department is seeking a balance of co-existing agricultural and non-agricultural uses that are mutually beneficial to each other. The current economic climate within the agriculture industry emphasizes the importance of seeking innovative means to sustain itself. The applicant's proposal is one such innovative approach to enhancing the cultivation and productivity of the lands upon which it will be established.

The proposed use will not substantially alter or change the essential character of the land and the present use. With the integration of agricultural activities within its operations and programs, the proposed retreat will not significantly change the fundamental agricultural character of the project site or the surrounding area. The height of the proposed haies is not more than the allowable 35 feet height for residential structures permitted within the Agricultural zoned district. The various hale structures will be distributed throughout the 14.94-acre project site in a manner that will promote to "open space ambiance" being sought by the applicant. To ensure the preservation of the agricultural character of the project site and surrounding area, it is recommended that the proposed project be constructed and operated in keeping with substantial representations

made within the applications and as amended.

The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Orchards, which allow for macadamia nuts, papaya, citrus, and other similar agricultural products. The proposed use is consistent with the following goals and policies of the Land Use and Economic Elements of the General Plan:

Land Use Element

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

Agricultural Sub-element

- Agricultural land shall be used as one form of open space or as green belt.
- The compatibility of agricultural and non-agricultural uses should be carefully reviewed and where appropriate, buffers required.

Economic Element

- Provide residents with opportunities to improve their quality of life.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- The County of Hawai'i shall strive for an economic climate which provides its residents an opportunity for choice of occupation.

As previously mentioned, the proposed retreat will integrate proposed agricultural activities within the property and within its operations and programs. The overall concept of the proposed retreat is to enable guests to learn and experience the cultivation of agricultural practices and the benefits of traditional Hawaiian food and medicinal herbs, as well as spiritual wellness through a series of "hands-on" programs. The agricultural products grown on-site will be served to guests while the Hawaiian medicinal

herbs would be used as part of the retreat's educational and wellness programs. Through its proposed programs, the applicant has demonstrated its commitment to conduct agricultural activities in a manner consistent with the objectives of the General Plan by blending together two distinct uses that will mutually benefit each other, yet preserve the agricultural character of the project site and the surrounding community.

Approval of the proposed retreat will be reflected as a commitment by the County to seek new directions in the type of industries, economic opportunities, and use of its resources. The County must consider various non-agricultural options that could have a secondary, beneficial effect upon a landowner's ability to cultivate their land. The project site provides an excellent case-in-point. The applicant will establish vegetable, fruit and herb gardens as well as other agricultural plantings within the subject property that will be incorporated into the healing and wellness experiences being offered by the proposed retreat. In the final analysis, approval of the proposed retreat will promote the use of agricultural lands within the project site rather than preserving the current vacant condition of the land.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management Program. The County's Special Management Area (SMA) boundary line meanders within the front portion of the property, about 500 feet from the shoreline and a depth of approximately 200-400 feet from the Kalapana-Kapoho Road. The property is approximately 100 feet from the shoreline at its closest point, inclusive of the road right-of-way. The kiosk will be the only structure that will be constructed within the SMA area. All other proposed structures will be located more than 300 feet mauka from the Kalapana-Kapoho Road. The proposed project will not impact any recreational resources, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the property will not be affected by any coastal hazards nor beach erosion. Therefore, the approval of the subject request shall not be contrary to the objectives and policies of the Coastal Zone Management Program.

The findings of an archaeological survey conducted by Archaeological Consultants of the Pacific, Inc. determined that the property may have been part of the Lower Puna Field System, an intensified dryland agricultural system. The findings also identified a heiau (Site 21143) and a cemetery (Site 2539). By letter dated July 17, 1998 and January 4, 2000, the State Historic Preservation Division has indicated the acceptance of the Preservation Plans for the Burial Site #2539 and Heiau Site #21193. The applicant intends to preserve the two sites and provide a 50-foot construction and permanent buffer zone around the Burial Site as well as provide access easement to families associated with the burial site. The heiau site will be protected by a 10 meter wide buffer zone, maintaining the existing coconut grove adjacent to the site and the existing path, and no

building activity will occur on the property that could affect the integrity of this site. At present, there is no evidence of traditional and customary Native Hawaiian rights being practiced on the property. Therefore, no feasible action is necessary to protect these rights.

Because a portion of the property lies within the Special Management Area, there is also a Special Management Area Use Permit application that is concurrently being processed for review of the proposed development cumulatively for any substantial adverse environmental impact.

Based on the above considerations, the approval of the Special Permit request to establish the Kalani Kai arts, agriculture and wellness retreat would be supportive of the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The proposed development shall be limited to a maximum of forty (40) guest rooms, exclusive of the staff rooms.
3. The proposed development shall not exceed thirteen (13) hale units. There shall be no individual kitchen facilities within the hales.
4. The applicant shall submit a revised metes and bounds description in map and written form for the project area within three (3) months from the effective date of this permit. Said map and written description shall be signed and stamped by a registered professional land surveyor.
5. The applicant shall submit an agricultural use plan for the balance of the subject property for the approval of the Planning Director within six (6) months from the effective date of this permit.
6. The applicant shall complete the development and operate all of its related facilities and activities in keeping with substantial representations made in the applications and as amended by the November 12, 2002 letter.
7. The construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to the start of construction,

Final Plan Approval for the proposed building and related improvements shall be secured from the Planning Director in accordance with the Zoning Code pertaining to Plan Approval. Plans shall identify all existing structures, proposed structures, signage, fire protection measures, proposed parking areas, driveway and interior roadways, lighting and other improvements associated with the proposed use. The parking areas and driveways to all the proposed haies will consist primarily of hard-packed gravel and red cinder surface in keeping with the natural environment. The driveways will be 20 feet wide to accommodate emergency vehicles. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. The natural forest and native species appropriate to the area shall be incorporated into the landscaping where possible.

8. Any exterior signs shall meet with the approval of the Department of Public Works.
9. Access for egress and ingress to the subject property from Kalapana-Kapoho Road shall meet the requirements and approval of the Department of Public Works. If required, the applicant shall provide the necessary roadway improvements within the Kalapana-Kapoho Road, at no cost to and meeting with the approval of the Department of Public Works.
10. Drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy for any structures within the project site.
11. All earthwork activity, including grubbing and grading, shall conform to Chapter 10 - Erosion and Sedimentation Control, of the Hawai'i County Code.
12. The applicant shall prepare and submit a Solid Waste Management Plan to the Department of Environmental Management for review and approval. A copy of the approved plan shall be submitted to the Planning Department prior to the issuance of a Certificate of Occupancy for any structures within the project site.
13. The applicant shall meet the requirements of the Fire Department relating to fire apparatus access road, including turning radius and turnarounds, and water supply storage for fire protection.

14. A copy of the approved Preservation Plans for the Burial Site #2539 and Heiau Site #21193, and its acceptance letter from the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval or prior to any approval for any land alteration permits, whichever occurs first.
15. 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.
16. If applicable, the applicant shall comply with the requirements of the Department of Health relating to Chapter 10, Public Swimming Pools, and Chapter 12, Food Establishment Sanitation.
17. A septic system shall be established in compliance with Department of Health requirements. No cesspools shall be permitted for the proposed development.
18. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed development.
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. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
21. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

Mr. Richard Koob

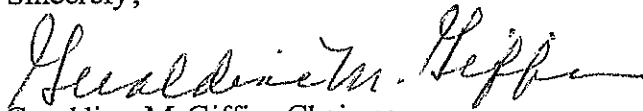
Page 21

- 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 Permit 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 applications 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

Lkoob01PC

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