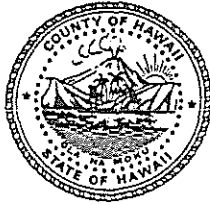


Harry Kim  
Mayor



**County of Hawaii**  
**PLANNING COMMISSION**

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(808) 961-8288 • Fax (808) 961-8742

December 1, 2003

Dave Eadie, CEO  
Rutter Development Corporation  
18012 Cowan, Suite 200  
Irvine, CA 92614-6810

Dear Mr. Eadie:

Special Management Area Use Permit Application (**SMA 03-012**) ✓  
Request: 500 Homes/Homesites, 18-Hole Golf Course and Related Improvements  
Use Permit Application (**USE 03-002**)  
Request: Golf Course and Related Improvements  
Use Permit Application (**USE 03-003**)  
Request: Major Recreation Facility  
Applicant: Rutter/KW Kohanaiki, LLC  
Tax Map Key: 7-3-9:3 and 16

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The Planning Commission at its duly held public hearing on November 7, 2003, voted to approve the above-referenced applications. **Special Management Area (SMA) Use Permit No. 439** is hereby issued to allow the development of 500 homes/home sites project, an 18-hole golf course and golf clubhouse, public coastal park facilities and related improvements; **Use Permit No. 197** is hereby issued to allow the development of an 18-hole golf course, golf clubhouse, and related improvements within the Resort-Hotel (V-1.25), Village Commercial (CV-10), Multiple Family Residential (RM-3), Single Family Residential (RS-10) and Open (O) districts; and **Use Permit No. 198** is hereby issued to allow the development of a major recreational facility (portion of an 18-hole golf course and related improvements) within the Limited Industrial (ML-10) district. The property is located between the Kaloko Honokohau National Park and the Ooma property, makai of the Queen Kaahumanu Highway (Highway 19), Kohanaiki, North Kona, Hawaii.

Approval of these requests are based on the following:

**Special Management Area Use Permit**

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.

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**The proposed project 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 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 project will be developed in phases to meet market demands and to coincide with the necessary infrastructure improvements. The property owner intends to complete the golf course, athletic club, a portion of the single family residences, major public access improvements (coastal park), and all ancillary uses in the first few years, with the remaining uses to be developed as market conditions warrant. A 63-acre portion of the golf course will be located on public land, which will then be leased to the applicant.**

The soil on the project site is classified as A'a and Pahoehoe lava flows and the Land Study Bureau's Productivity Rating is "E" or "Very Poor". The project area is a 448-acre oceanfront site located approximately two miles south of the Kona International Airport at Keahole and five miles north of Kailua-Kona. Appropriate mitigation measures as proposed by the applicant would preclude any substantial adverse impacts the proposed development may have upon coastal recreational and visual resources, public access to and along the shoreline, or upon the coastal ecosystem and adjacent Kaloko-Honokohau Historic National Park. The applicant has indicated that the most economical method for wastewater treatment is an on-site wastewater treatment plant, as there is no infrastructure to carry flows from the project site to the Kealakehe treatment plant. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements as represented by the applicant, and provided in accordance with existing County regulations, and additional conditions proposed in this permit. Likewise, any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing County erosion and sedimentation control regulations as well as standard construction practices, and additional conditions proposed in this permit.

**The proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.** An archaeological inventory level of the project site is contained in the Kohana'iki Resort Community, Final Environmental Impact Statement, August 1986. The survey identified a total of 105 archaeological sites within the project site and provided general significance assessments and recommended general treatments for these sites. Subsequent investigations during the 1987 topographic survey and later data

recovery work identified seven additional sites. (The number of sites reported in the application and the number in the archaeological reports do not match exactly because the application omits a few sites that are makai of the certified shoreline and hence not actually in the project area). There are numerous archaeological sites that have been data-recovered and are not required to be preserved. However, to the extent practicable, the applicant has stated that these sites will be preserved. The cultural history of these additional sites, including some that cannot be preserved, will be included in interpretive exhibits on the project site. The State Department of Land and Natural Resources Historic Preservation Division (SHPD) has also agreed with the developer's archaeologist's assessment of the sites that are considered significant and should be preserved. There are 18 such sites. (A line of ahu running across the northern half of the property at a distance of 900 to 1,500 feet from the sea will be preserved; this is considered one site). Among the preservation sites are the seven sites that either contain burials or have features consistent with burials. According to SHPD's letter of September 17, 2003, the landowner must still prepare a Burial Treatment Plan, obtain approval of the plan from the Hawaii Island Burial Council, and prepare a Preservation Plan. These plans would contain the buffers around the various sites. The "preservation" sites are shown in yellow on the applicant's Exhibit 5-4. The "data recovery" sites that will be preserved are shown in green. As a condition of this approval, the applicant will be required to prepare and secure the Planning Director and SHPD's approval of an archaeological preservation and data recovery plan prior to commencing any land alteration activities. Furthermore, should archaeological features be discovered during construction, a condition of this approval requires the applicant to contact the State Department of Land and Natural Resources and secure their clearance prior to continuing with any development activities.

The coastal region of the project site contains a number of anchialine ponds consisting of one of the largest concentrations of ponds on the island of Hawaii. The ponds consist of brackish water containing several species of shrimp and a variety of vegetation types. The ponds undergo a natural process of senescence over time, changing from barren lava pools to pools with sediment bottoms and aquatic vegetation, and finally to partially filled marshes and grasslands. As the previous mapping was too general to accurately plot the proposed coast park improvements, the anchialine ponds on the site were remapped by Dr. Richard Brock. The current mapping efforts revealed 137 anchialine ponds. The conceptual site plan shows the proposed project substantially avoiding the anchialine ponds on the site. There are a few anchialine ponds within the 6<sup>th</sup> hole fairway and one near the 5<sup>th</sup> hole green that may be affected by golf course construction. However, these ponds are very small and only contain water at high tides. The ponds were not recognized as ponds in the 1986 survey.

According to the applicant, a majority of cultural resources identified within the project site are situated within the ocean frontage portion of the project area. The

applicant states that, "given the general nature of the proposed development (preservation of public use open space within the seaward portion of the ocean frontage area of the project site and location of potential cultural resources within the shoreline public access open space), and the evaluation of the native Hawaiian traditional and customary cultural practices current within the project area, the development would likely have minimal potential adverse impacts upon either identified cultural resources or the various cultural resources users." The applicant conducted an extensive oral and documentary history of the area (Exhibit A in the application). The kupuna informants discussed many cultural resources, including the Mamalahoa Trail, a coastal trail, loko kai and wai'opae (anchialine ponds where native shrimp and fish were cultivated), burials, and various other sites and features.

Currently, public access to the shoreline is by one of two jeep trails. The primary access extends from the NELHA/HOST Park access road along a coastal trail fronting the adjacent O'oma II property and enters the project site at the northwest corner. Secondary public access is by a rough jeep trail extending down in the vicinity of the northern property line, on the O'oma II property, directly from the Queen Kaahumanu Highway. This trail connects with the NELHA/HOST Park trail near the northeast corner of the project site. There is no documentation of public rights to use this mauka-makai jeep trail. From this point, a single jeep trail extends along the entire coastal frontage of the project site. The coastal jeep trail is approximately on the alignment of an older pedestrian trail from the Hawaiian period. The applicant proposes to construct a new mauka-makai road on its property, along its northern border with O'oma II, which would connect with a new lateral public access road that would run roughly parallel to the existing coastal jeep road, but inland. The lateral access road is planned to avoid anchialine ponds and archaeological sites. The lateral access road would end near Wawahiwaa Point, and public access would continue to the southern boundary as a pedestrian trail. After the lateral public access road has been completed, the present coastal jeep road would become a pedestrian trail. The Department of Land and Natural Resources has opposed long-term vehicular use of the jeep road and wants the trail to become part of the Ala Kahakai trail system.

Based on the limited development in the vicinity of the project site, air quality is relatively good. However, there are periods of heavy volcanic activity, which increases particulate levels, resulting in substantial increases in ambient concentration of mercury and sulfur dioxide. Air quality analyses conducted as part of the Environmental Impact Statement determined that long-term air quality impacts associated with the project proposed at that time would not exceed state and federal thresholds. According to the applicant, this conclusion remains valid for the proposed project. Short-term air quality impacts are proposed to be mitigated by adhering to proper erosion control measures, utilizing low emission mobile construction equipment, maintaining construction

equipment engines, and using low sulfur fuel for construction equipment to the extent practicable. The project site is generally visible from various points between Keahole Point and the entrance to the Kona International Airport at Keahole to the north and along the Queen Kaahumanu Highway to the Honokohau Small Boat Harbor to the south. The project site is also visible from some points along the Mamalahoa Highway. According to the applicant, a view plane analysis was conducted to determine the potential impact of the proposed development on views from the Queen Kaahumanu Highway and the coastal pine trees. The analysis determined that there was no or minimal effect of the proposed development on the view from the Queen Kaahumanu Highway to the sea.

The project site is currently undeveloped, therefore existing noise from the site is minimal and limited to noise generated from beach usage. Existing noise sources that currently impact the project site are also minimal. Short-term potential noise impacts are limited to construction noise associated with earthmoving equipment. However, based on the distance from the project site to the closest residential development, this impact is anticipated to be less than significant. The applicant will comply with the State Department of Public Health regulations concerning proper maintenance of construction equipment, as well as to limit construction activities between the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturdays. In 1997, the State Department of Transportation (DOT) Airports Division completed a report on noise impacts associated with the Keahole International Airport. A small portion of the northern part of the project site is located within a noise contour of between 55 and 65 LDN. The Federal Aviation Administration (FAA) considers residential uses to be compatible as long as residences are located within the noise contour below 65 LDN. The State DOT uses a stricter 60 LDN standard. No residential uses are proposed within these noise contours. The small portion of the property above 55 LDN will be in golf course or beach park use. As a condition of the State Land Use Commission action that reclassified the property to Urban, the landowner was required to grant easements to the DOT that the airport could, if necessary, be allowed a greater noise impact on the property, and the landowner would have to soundproof any homes if there were a greater noise impact.

The proposed project is consistent with the applicable coastal hazard objectives and policies of Chapter 205A, HRS. Proposed land uses and infrastructure will be designed and constructed in accordance with Federal, State and County requirements to promote the stated objective and policies.

The Department of Public Works recommends that a drainage study be prepared for the project site and a recommended drainage system installed meeting with their approval. The preparation of such a study has been made a condition of this approval.

Because the State Department of Transportation plans to convert the Queen Kaahumanu Highway to a four-lane, median divided highway, there will only be a limited number of intersections allowed where traffic can cross. The Department of Transportation expects to convert the Kohanaiki intersection to a right-in, right-out access only after the Queen Kaahumanu Highway is widened to four lanes. The Kohanaiki landowner is also investigating the possibility of sharing an intersection with either the O'oma II property to the north, or with the Kohanaiki Business Park, to reduce the number of intersections on the Queen Kaahumanu Highway.

If the applicant utilizes the present access point on the Queen Kaahumanu Highway as shown in the applicant's site plan dated September 5, 2003, and occupancy begins before the conversion of the Queen Kaahumanu Highway to a median-separated four-lane highway in this area, the applicant shall construct a fully channelized intersection meeting with the approval of the Department of Transportation, including a left-turn storage lane and right-turn acceleration and deceleration lanes. If required by the Department of Transportation after the Queen Kaahumanu Highway is converted to a median-separated four-lane highway, the applicant shall reconfigure its intersection to a right-in, right-out only, construct necessary improvements to the satisfaction of the Department of Transportation at its own expense, and highway-crossing intersection will be eliminated. If occupancy is to occur after the conversion of the Queen Kaahumanu Highway to a median-separated four-lane highway, the applicant shall construct a right-in, right-out only intersection, with necessary improvements, meeting with the approval of the Department of Transportation.

**The proposed development is consistent with the County General Plan and Zoning Code.** The proposed development conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area for Resort, Low Density Urban, Medium Density Urban and Open. While not typical of urban types of use due to its extensive, structured landscaping and minimal amount of structures, a golf course does provide direct support of resort uses. Its proximity to resort areas is essential for it provides a much desired recreational amenity for both tourists and residents alike.

Regarding traditional and customary Hawaiian rights, the Planning Commission finds as follows:

Investigation of valued resources: The Planning Commission has the following information from which it can determine the valued cultural, historical, and natural resources within the project area:

- Cultural Resources and Potential Users: Cultural Impact Issues Study, Kohana'iki Development Project, July 2003
- Kohanaiki Ma Kekaha Wai 'ole o na Kona, a report on archival and historical documentary research and oral history interview for the ahupua'a of Kohanaiki
- Anchialine Pond Management Plan, by Richard Brock, Ph.D., October 2002
- Botanical Survey, excerpts from the Kohana'iki Resort Community, Final Environmental Impact Statement, August 1986
- Faunal Survey, from FEIS, August 1986.
- Minutes of the Kohanaiki Working Group and public meetings, which included contributions from kupuna familiar with the area
- Public testimony at the Planning Commission's Oct. 3, 2003 hearing.

The valuable cultural, historical, and natural resources found in the project area: Historical sites, as described in the various archaeological reports submitted by the applicant and as described in the cultural impact assessment and oral history, including the coastal trail, Mamalahoa Trail, petroglyphs, ilina (burial sites), paena wa'a (canoe landing), poho pa'akai (salt basins) and poho palu (bait cups). (Some of these are actually located in the coastal zone makai of the certified shoreline and hence outside of the SMA.) The botanical report revealed the existence of some plants occasionally used by native Hawaiians: majapilo or pua-pilo (a medicinal plant), 'uhaloa (a medicinal plant), pili grass (used for thatch), 'ilima (an ornamental flower), and makaloa (a sedge used for mats). There is no evidence that these plants are particularly sought out or used from this area.

Existing fauna at the project site include 13 bird species, including the House Finch, Japanese White-eye, Great Frigatebird ('Iwa,) Black-crowned Night Heron, ('Auku'u), Pacific Golden Plover (Kolea), Grey Francolin, rock dove, zebra dove, common barn owl, Melodious Laughing-thrush, Nutmeg Mannikin, Yellow-billed Cardinal and the Northern Cardinal. There is no evidence of any traditional or customary use of these bird species in the project area. The only mammalian species on the site was the mongoose, found during the EIS survey. There was no sign of the endangered Hawaiian Hoary Bat.

- Anchialine ponds, which contain a number of native shrimp, including the 'opae 'ula, which was sometimes gathered for bait.
- The project site borders the shoreline and ocean. While the actual shoreline and ocean are not within the SMA, possible negative effects on the shoreline and coastal waters must be considered as part of the SMA process. The shoreline and ocean waters contain various marine organisms (primarily fish and shellfish) commonly used by native Hawaiians (and others), in an environment of very clean water.

Possible adverse effect or impairment of valued resources: The proposed development will require site grading and grubbing, and construction of various improvements such as roadways, buildings, and a golf course. These activities will cause major changes to the vegetation types which presently exist at the project site. Vegetation cover and density will increase and changes in species composition will be introduced through landscaping and natural processes. The proposed development will result in the loss of a number of native plants. However, these plants are found in similar habitats throughout the general area. Native plants can continue to grow within the natural lava. Almost all of the physical alteration of the site would occur on what the botanical study describes as the "scrub vegetation" zone - pahoehoe lava with a sparse cover of grass and scattered kiawe trees. Most native plants are found in the 45+ acre coastal area that will remain in a largely natural condition. Of the plants with some traditional use, 'uhaloa and 'ilima are extremely common elsewhere, and will be retained within the Mamalahoa Trail buffer and the 45+ acre coastal area. Pili grass will also continue to be found within the trail buffer and coastal area. Maiapilo is not widely distributed; it is found only in low dry coastal lava environments such as Kohanaiki, but many individual plants can be found within the coastal area and along the Mamalahoa Trail buffer. Makaloa is found only near the anchialine ponds and would be preserved within the pond buffers.

The proposed development will also alter the existing fauna on the site. The landscaping of large areas presently consisting of pahoehoe lava will create non-native habitat areas. Existing on-site species will be dislocated as part of the project development.

If the applicant follows the proposed mitigation measures, there should be minimal impact to archaeological and historic resources. Impacts to historic and archaeological resources associated with the State-owned Mamalahoa trail, which will be crossed by the main entry roadway to the project site, may occur. The crossing location was selected in part for its minimal impact upon the trail. The proposed project may also result in beneficial archaeological/historic impacts, including documentation and



preservation of historic sites and archaeological artifacts. The cultural history of some archaeological sites will be included in interpretive exhibits on the project site.

Feasible actions to protect native Hawaiian rights: Potential cultural resources most likely to be considered as traditional cultural properties within the subject area include stone cairns marking land boundaries, roads, trails, canoe landings, ceremonial site, petroglyphs, burial sites, anchialine ponds and animal pens. Cultural practices include activities such as salt making, food procurement, aquaculture, fire making, food processing, tool and implement fabrication, weaving, canoe construction and story telling. The great majority of the potential cultural resources identified within the project area are located within the ocean frontage portion of the project area, within the area that will be in public park. According to the cultural impact assessment prepared by the applicant's consultant, virtually all of the natural and cultural resources related to traditional and customary cultural practices are found either within or easily accessible from the public use portion of the project area immediately adjacent to the shoreline. Given that the applicant has committed to providing easily accessible and improved public use open space along the ocean frontage portion of the project area, and the location of potential cultural resources within the shoreline public access open space, the development should have minimal potential for adverse impacts to identified cultural resources or the various cultural resource users.

The actual use of the natural resources located along the shoreline, such as fishing or gathering of 'opihi, is regulated by state fish and game laws of general application. Because these areas are outside the SMA permit area, and are covered by other state laws, this permit does not propose other regulations to conserve these resources. Within the SMA however, are the anchialine ponds. Based on the record, there may be a traditional and customary right to gather 'opae 'ula from the anchialine ponds. At the same time, these shrimp are confined to a rare, diminishing, and threatened ecosystem. Traditional Hawaiian use of natural resources incorporated long-term conservation through a kapu system. Stewardship balanced usage. Currently, no laws exist that specifically limit the taking of 'opae 'ula, although some general laws like net sizes would apply. It would not fulfill the mandate to protect the resources that support the exercise of traditional rights to allow uncontrolled taking of 'opae 'ula.

There may also be a traditional right of access by some native Hawaiians to culturally-important sites on private property, but it is necessary to have a mechanism to determine who has a legitimate right of access, and to balance the exercise of that right with the interests of the private property owners.

To manage the exercise of customary and traditional Hawaiian rights in the area, the Planning Director recommends the creation of a Kohanaiki Cultural Committee

("KCC".) The KCC would have jurisdiction over the gathering of 'opae 'ula, the gathering of native plants on public property and within the 50-foot wide Mamalahoa Trail buffer, and access to cultural sites (except burials) which are identified as preservation sites on private property. (Access to burials will be determined by the Burial Council). The proposed KCC is generally patterned after the Kaupulehu Development Monitoring Committee established by the Land Use Commission for the Kaupulehu Development. Further details about the KCC are in the proposed conditions.

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 permit for development of:

- 1) **a maximum of 500 homes in a single-family or duplex configuration, by a master developer or individual lot purchasers;**
- 2) **an 18-hole golf course, golf clubhouse and ancillary uses**
  - **athletic and tennis facility to serve the residents (and the general public on a limited basis);**
- 3) **maintenance building/baseyard;**
- 4) **residents' beach facility, with a maximum size of 8000-square feet, including snack bar, toilets and showers, a beach equipment storage area, and office; and residents' cart parking for approximately 32 carts;**
- 5) **accessory roadways;**
- 6) **drainage and utility improvements;**
- 7) **an approximately 109-acre public coastal park facilities including an approximately 63-acre area of the golf course, roadway, parking, restrooms, coastal trail, canoe halau, and camping areas and other related improvements;**
- 8) **landscaping;**
- 9) **maintenance and restoration of anchialine ponds;**
- 10) **related project infrastructure including but not limited to wastewater treatment plant, potable and nonpotable water supply, and utilities.**

is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the 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. Construction of the proposed development, except for the construction of individual homes, shall be completed within ten (10) years from the effective date of this permit. The project shall be developed substantially as represented in the application.
3. Prior to the commencement of construction of the golf course and other non-residential structures and facilities, Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code. Development plans shall identify all proposed structures, fire protection measures, paved driveway accesses and parking stalls and other improvements associated with the proposed uses. As required by the Zoning Code, all structures in V, CV, and ML zone shall obtain Plan Approval. The development plans shall reflect uses as substantially represented in this application. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
4. The applicant shall submit and implement a landscaping master plan designed to filter views between the shoreline and residential areas, and of the residents' beach facility from views from the coastline to the north and south. In the coastal area near the lateral access road and trail, the landscaping plan shall rely primarily on plants indigenous to Kona and/or Polynesian introductions.
5. The maximum number of homes shall be 500. Subdivision plans for the single-family development areas shall be submitted within five (5) years from the effective date of this permit. The proposed residences shall be located no closer to the shoreline than shown on the Site Plan dated Sept. 5, 2003 (hereinafter referred to as the "Site Plan"), and shall incorporate lot line setbacks as shown.
6. Construction of single-family or duplex homes by individual lot owners or a master developer are covered by this approval and do not need subsequent Special Management Area Use Permit.
7. The first (makai-most) row of residential lots, and the lots in Area 4 bordering the present Kaloko-Honokohau National Historical Park boundary, shall consist of single-family homes only, which shall be one-story and not more than 30 feet in height, measured from the natural grade to the top of the roof. The finish grade of these lots shall not be elevated by fill more than five feet above the natural grade. The remaining residences and all other structures shall be no more than two stories and 35 feet in height, measured from finished grade to the top of the roof.

8. The residents' beach facility shall not exceed 8,000-square feet in size and shall be one story and not more than 30 feet in height, measured from natural grade to the top of the roof. The finish grade of the lot shall not be elevated by fill more than five feet above the natural grade.
9. On the border between "Area 4" and the present Kaloko-Honokohau National Historical Park boundary, the applicant shall establish plantings to shield the residences from views from the National Park. The plantings shall be commenced before any construction of homes on the property. The landscaping plan for this area shall be developed in consultation with the National Park.
10. The applicant shall have some flexibility from the Site Plan in the exact location of golf course fairways, tees, and greens, residential building pods, the maintenance area, and golf clubhouse, residents' beach facility, access roads and public park facilities, with Plan Approval from the Director, except that the following specific limitations must be followed:
  - A. no residences or other private structures may be located closer to the shoreline than shown on the Site Plan;
  - B. the number of residences on the first row of residential lots (nearest the shoreline) shall not exceed the number of lots shown on the Site Plan;
  - C. the number of lots and setbacks in Area 4 may not be altered with respect to the present National Park boundary;
  - D. no facilities may be developed within 400 feet of the present National Park boundary except as shown on the Site Plan;
  - E. golf course fairways, tees and greens shall not be located closer to the shoreline than shown on the Site Plan, and shall not be relocated into shoreline areas where not shown on the Site Plan;
  - F. the residents' beach facility shall be located as shown on the Site Plan, or farther from the ocean in the same general vicinity;
  - G. golf holes must be sited so that the mauka-makai and lateral access roadways and shoreline trail are not within the safety zones;
  - H. public park facilities including the mauka-makai road, lateral road, parking lots, restrooms, and camping areas, shall be generally as shown on the Site

Plan but the exact location shall be determined through a further planning process, and the location of the canoe halau will be established in that process;

- I. specific conditions requiring buffers for anchialine ponds, Mamalahoa Trail, historical sites, and all other specific conditions of the permit, must be followed;
  - J. the mauka-makai public access road shall be bordered by a golf course rather than houses; and
  - K. the project must be developed in a way that retains the views from the Queen Kaahumanu Highway toward the sea that the applicant's sightline study (Exhibit 5-6) represents will remain open (blue areas shown in Sightlines A, B, and C).
11. The applicant shall construct public park facilities including a main mauka-makai public access road, and a lateral vehicular public access road, as shown on the Site Plan, 121 public parking stalls, a restroom facility consisting of eight (8) toilets and eight (8) outdoor showers, six (6) designated camping areas, and all associated infrastructure, including connections to water and wastewater lines. The lateral public access road shall be a minimum of 10 feet, with pullouts as shown to accommodate two-way traffic, have a hardened surface, and structural and/or landscaping features to prevent vehicles from going off-road in a makai direction. The applicant shall also construct a canoe halau with secure storage. The public agency accepting the donation may construct other public park facilities in the future, including a caretaker's residence. The location of the caretaker's residence, if any, shall be determined within one year of the effective date of the permit through the further park planning process. Public vehicular use of the roads shall be limited to vehicles licensed for use on public highways.
12. The applicant shall fulfill its prior commitment in the "Good Faith Agreement re Kohanaiki", to donate 109 acres to public ownership, in the area shown on Exhibit 3-4, "Coastal Park". In the area comprising the golf course and golf course safety zones shown in pink on Exhibit 3-4 (approximately 63 acres) the applicant shall retain an exclusive easement or a lease, free of charge, to operate and maintain a golf course and golf safety zones, and residents' beach facility. The remaining area ("purple" on Exhibit 3-4) shall be a park open to public use. The applicant, its successors and assigns, shall pay 1/3 of the annual operating costs for the public park. The public park area may be donated in stages at the request of the donee public agency or agencies. With respect to the area within the authorized

boundary of the Kaloko-Honokohau National Historical Park (the strip of land approximately 200 feet deep along the shore from the National Park boundary to Wawahiwaa Point), the applicant can fulfill this condition by offering said area for sale to the National Park at a price determined by impartial appraisal, or at any amount mutually agreed to between the National Park and the applicant, and donating any and all proceeds received from the sale to the National Park to a fund for the maintenance of the public park area. The donated amount shall not be credited against the 1/3 maintenance obligation of the applicant. The exact area to be offered to the National Park shall be determined by subsequent discussions between the National Park, the applicant, and the County. The applicant may encumber any donated area with a conservation easement restricting its future uses to public park and related uses, and in the golf course areas, to golf course and related uses. If no public entity is willing to accept donation of the public park area, the applicant shall have the right, consistent with the "Good Faith Agreement re Kohanaiki", to request an amendment of this permit to reduce the scope of public facilities that must be constructed.

13. The applicant shall begin construction of the public park facilities no later than the first stage of infrastructure construction for the project, and the public park facilities shall be completed and available for public use no later than completion of infrastructure construction for the first residential lot subdivision, the opening of the golf course, or the issuance of a certificate of occupancy for the residents' beach facility, or occupancy of the first residence on the property, whichever occurs first.
14. Public access to the public park area shall be allowed from 5:30 a.m. to 9:00 p.m. daily, unless otherwise restricted by the public agency managing the park. Camping and access for night fishing shall also be available through a permit system managed by the public agency.
15. In the interim between the effective date of this permit and the completion or donation of the public park as described herein, the applicant shall allow vehicular access along the existing coastal jeep road from the northern boundary to the approximate area of Wawahiwaa Point, and pedestrian access from Wawahiwaa Point to the National Park boundary, subject only to reasonable regulation for hours of use and safety, including safety during construction periods. The applicant may control and limit night access. Vehicular access shall be limited to vehicles licensed for highway use.

16. The design of the public park, and its management, shall involve an advisory committee consisting of community members and representatives of the applicant and/or lot owners.
17. After the opening of the lateral public access road, the existing coastal jeep road shall be closed to general vehicular traffic, and shall be a pedestrian trail. It may be used for vehicular traffic for park maintenance, handicapped access, and emergency access, if allowed by the responsible public agency.
18. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, anti-freeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.
19. All fertilizers, pesticides, and herbicides shall be stored in a covered maintenance area designed to contain any spill.
20. Equipment wash area shall be set up so that oil and grease can be removed.
21. All employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial liquid spills onto bare ground.
22. Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed along with the local fire code).
23. The applicant shall file with the Planning Department the current names, telephone and pager numbers of at least two (2) contact persons who have authority to order immediate corrective actions (including cessation of activity) should there be problems during the project construction phases.

24. The golf course, clubhouse, and tennis/athletic facilities shall be developed according to the following:
  - a) exterior night lighting for the golf course and related uses shall be downlighted, shielded and comply with the applicable County of Hawaii lighting ordinance;
  - b) prohibition of night lighting on the golf course for night golf;
  - c) prohibition of night lighting for evening operations of the driving range, with the exception of ambient lighting from other uses;
  - d) prohibition of amplified sound for clubhouse or other facility functions after 10:00 p.m.;
  - e) operation of maintenance vehicles shall be prohibited between the hours of 10:00 p.m. and 6:00 a.m., with the exception of emergency repairs and maintenance during golf tournaments;
  - f) exterior night lighting for tennis courts within the project site shall be downlighted, shielded and comply with the applicable County of Hawaii lighting ordinance.
25. All project utilities shall be underground. The applicant shall make a good-faith effort to obtain permission from the Department of Transportation to underground the main utility line crossing of the Queen Kaahumanu Highway.
26. The applicant shall construct all necessary water system improvements prior to occupancy.
27. The applicant shall consult with the State Department of Land and Natural Resources-Commission on Water Resource Management and the County Department of Water Supply regarding the provision of appropriate buffers from any potable water wells within the affected area to ensure the protection of these water sources. Approved buffers shall be incorporated in plans submitted for Plan Approval Review.
28. A detailed drainage study shall be prepared by the applicant for review and approval by the Department of Public Works, National Park Service, and the Department of Land and Natural Resources prior to submittal of plans for Final



Plan Approval. A drainage system shall be installed meeting with the approval of the Department of Public Works.

29. Unless superceded by a Planned Unit Development or Subdivision Code variance, the applicant shall plan and construct all roadways, except for the lateral coastal public access road, in accordance with the Subdivision Code and Ordinance No. 88 159 or successor ordinance. A dedicable turnaround shall be provided on the County road side of any security gate.
30. Install street lights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division.
31. If the applicant utilizes the present access point on the Queen Kaahumanu Highway as shown in the applicant's site plan dated September 5, 2003, and occupancy begins before the conversion of the Queen Kaahumanu Highway to a median-separated four-lane highway in this area, the applicant shall construct a fully channelized intersection meeting with the approval of the Department of Transportation, including a left-turn storage lane and right-turn acceleration and deceleration lanes, and street lighting. If required by the Department of Transportation after the Queen Kaahumanu Highway is converted to a median-separated four-lane highway, the applicant shall reconfigure its intersection to a right-in, right-out only, construct necessary improvements to the satisfaction of the Department of Transportation at its own expense, and highway-crossing intersection will be eliminated. If occupancy is to occur after the conversion of the Queen Kaahumanu Highway to a median-separated four-lane highway, the applicant shall construct a right-in, right-out only intersection, with necessary improvements, meeting with the approval of the Department of Transportation, unless the Department of Transportation determines that this should be a through intersection, in which case applicant shall construct a full channelized intersection meeting with the approval of the Department of Transportation.
32. The applicant shall make a good faith effort to have a combined highway access with TMK: 7-3-009: 022, the O'oma II property, ("Parcel 22") using the Department of Transportation-approved access point on Parcel 22. The common intersection shall be constructed with improvements meeting with the approval of the Department of Transportation. "Good faith effort, " in the context of this condition, means that the applicant will (1) attempt to negotiate terms of common usage of such access point with the owner of Parcel 22; and (2) attempt to secure all other approvals, including governmental permits, necessary to utilize said access point for the Kohanaiki property. The applicant is not required to finalize arrangements for a common access on Parcel 22 if doing so will delay occupancy

of the Kohanaiki project, or if permit applications result in contested case proceedings with adverse parties, or if applicant cannot obtain rights to cross TMK 7-3-009:014 on reasonable terms. The owners of Parcel 22 and the applicant (and any other landowners using the access point on Parcel 22) shall share the cost of constructing said common intersection. If they are unable to agree, the costs shall be determined by binding arbitration. This condition shall be in effect only if a corresponding condition is made applicable to Parcel 22 in a rezoning or other land use approval, requiring Parcel 22 to provide a common intersection. If a common access is established and developed on Parcel 22, the present Kohanaiki parcel access on TMK 7-3-09:016 shall be extinguished.

33. The applicant shall allow use of its access intersection and access roadway within TMK 7-3-09:016 by TMK 7-3-009: 018 and 014, unless access is available to TMK 7-3-09:014 on Parcel 22. The access shall include a right-of-way that enables TMK 7-3-09:18 to have access to the common intersection on Parcel 22, if one is established. Other landowners shall bear the fair share of cost if and when they utilize the access for future development.
34. No lots shall have direct access from the Queen Kaahumanu Highway except through an access point approved by the Department of Transportation Highways Division.
35. The applicant shall retain a 50-foot wide undisturbed buffer of natural lava along the makai side of the Mamalahoa Trail (measured from the edge of the trail) and an additional 60-foot buffer without structures, unless the Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) recommends a wider buffer in the Preservation Plan.
36. The Mamalahoa Trail shall not be breached, except where crossed by the access road, without permission from the State of Hawaii.
37. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to issuance of a Certificate of Occupancy.
38. A Solid Waste Management Plan shall be prepared and submitted for approval to the Department of Public Works prior to submitting plans for Final Plan Approval. Approved recommendations and mitigation measures shall be

implemented in a manner meeting with the approval of the Department of Public Works.

39. All wastewater shall be treated at an approved wastewater treatment plant, to a minimum of secondary treatment, with R-2 effluent, unless a greater level of treatment is required by the Department of Health. The wastewater treatment plant shall have a standby generator to operate the plant in the event of a power outage. Wastewater shall be used for irrigation of landscaping or other beneficial reuse to the maximum extent feasible. If treated on-site, wastewater shall be beneficially re-used for golf course and/or landscaping irrigation to the extent feasible.
40. The applicant shall use best efforts to obtain a non-potable water source for golf course and landscaping irrigation, rather than use high quality well water.
41. The applicant shall submit a study of the non-potable water system that demonstrates that there will be no significant negative environmental effects on the anchialine ponds on the property, or in the Kaloko-Honokohau National Park, from the injection of brine from a reverse osmosis system, if one is used for the project, or from the applicant's withdrawal of non-potable water from wells, if that is the source of non-potable water. The Planning Director shall review and approve the study, in consultation with the National Park, before the construction of the non-potable water system.
42. An Emergency Response Plan shall be submitted to the Civil Defense Agency for review and approval, prior to the issuance of a Certificate of Occupancy. The applicant shall install a siren on the project site, meeting with the approval of the Civil Defense Agency.
43. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code, relating to Affordable Housing Policy. This requirement shall be approved by the County Housing Agency prior to issuance of a Certificate of Occupancy for any residential development.
44. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.

45. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires a National Pollution Discharge Elimination System (NPDES) permit. Best Management Practices shall be included as part of the NPDES permit.
46. The applicant shall contact the Army Corps of Engineers to identify whether a Federal permit (including a Department of Army permit) is required for this project. The applicant shall notify the Planning Director in writing, whether such permit is required for the development of the proposed project.
47. The applicant shall obtain approval of interim and final preservation plans by the State Historic Preservation Division. With the cooperation of the State, the preservation plan shall include sites on state property makai of the certified shoreline. The preservation plan shall specify interim and final preservation buffers. The interim preservation plan shall include fencing of preservation sites that may be affected by construction. All sites identified for preservation on the SHPD-approved list shall be preserved. In addition, "data recovery" sites shown in green on Exhibit 5-4 shall be preserved. These "green" sites may be returned to "data recovery" status if changes must be made to the current construction plans that makes their preservation infeasible.
48. The applicant shall complete a data recovery report to the satisfaction of the State Historic Preservation Division.
49. All preservation sites and burials shall be entered as archaeological easements on subdivision maps, unless the burial sites are declared "sensitive" by the Burial Council and not to be disclosed.
50. The applicant shall prepare and implement a plan for the interpretation of selected historical sites, in consultation with the National Park Service, the SHPD, and knowledgeable community members.
51. The line of 'ahus identified as preservation sites in Development Area 3 shall be preserved using front or rear yard setbacks in the residential lots as buffers.
52. The applicant shall prepare and obtain approval for a Burial Treatment Plan from the Hawaii Island Burial Council and shall implement the Burial Treatment Plan, prior to any land disturbing activities on the property, except for those that may be approved with an interim buffer around known burials as determined by the Planning Director in consultation with the State Historic Preservation Division.

All sites with burial features as identified in the archaeological studies shall be treated as known burial sites. All known burials are to be preserved in place unless otherwise authorized by the Hawaii Island Burial Council.

53. A public access plan, which shall include signage, shall be established and submitted for review and approval to the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division, prior to the issuance of any land alteration permits for activities within the project area.
54. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls 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.
55. The applicant shall develop and implement a groundwater and nearshore water quality monitoring program. The program shall be approved by the Planning Director in consultation with the Natural Energy Laboratory of Hawaii, the Ocean Recreation Council of Hawaii, (TORCH) and the National Park Service. The program shall be generally as proposed in the applicant's Comprehensive Ground and Coastal Water Monitoring Program. The first baseline testing shall be conducted no later than 12 months after the effective date of this permit.
56. The applicant shall develop and implement a marine life monitoring program, which shall include baseline studies and periodic repeat studies of nearshore marine life. The program shall be approved by the Planning Director in consultation with the Natural Energy Laboratory of Hawaii, the Ocean Recreation Council of Hawaii, (TORCH) and the National Park Service. The first baseline studies shall be completed prior to substantial construction on the project.
57. The applicant shall develop and implement an Anchialine Pond Management Plan. The plan shall be approved by the Planning Director, in consultation with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers. The Plan shall include appropriate buffers to prevent soil and construction materials from entering the ponds, and buffers against the use of agricultural chemicals (fertilizers, herbicides, and pesticides). There shall be a 40-foot buffer area around the ponds in which no substantial construction may occur. Allowable construction and activities in the 40-foot buffer zone would be limited to

construction of additional ponds, maintenance and restoration activities, construction of retaining walls to prevent fill or other materials from entering the ponds, or to mark pond boundaries, portions of the lateral public access road, cart paths, other similar low-impact construction, and plantings that will not result in degradation to the pond. All construction within the 40-foot buffer zone will require approval of the Planning Director. Turf or other plantings requiring irrigation and fertilization shall not be placed within 20 feet of a pond.

58. The applicant shall hire a pond manager.
59. The applicant or the pond manager shall remove sediment and exotic vegetation from selected anchialine ponds within two (2) years from the effective date of this permit.
60. All anchialine ponds on the property shall be preserved intact, except for the small area of ponds shown on the Site Plan in the middle of the 6<sup>th</sup> hole fairway, located in a depression in the lava, and a single pond shown in the Site Plan adjacent to the southwest side of the 5<sup>th</sup> hole green. Any pond disturbed or removed must be replaced by artificially created ponds at least twice in area, under the direction of the pond manager, and any applicable Corps of Engineers permits must be obtained.
61. The overall pond management/monitoring program shall be the responsibility of the applicant. The applicant shall monitor the pond areas in public ownership.
62. Within the non-golf public park areas, the routine pond maintenance and enforcement will be the responsibility of the public agency having jurisdiction over the public park area. Within the golf course area, routine pond maintenance and enforcement will be the responsibility of the applicant.
63. Any significant decline in ocean or anchialine pond water quality shall immediately be reported, in writing, to the Planning Director.
64. The applicant shall post signs prohibiting the introduction of fish in the ponds.
65. Fish and other organisms not native to the ponds shall not be introduced to ponds where they are not already present.
66. Applicant shall register its course with Audubon International and use its best efforts to obtain and keep Audubon International certification at the "Silver" level for the golf course development.

67. The applicant shall comply with the "Department of Health Guidelines for Golf Courses in Hawaii" dated June 2000, and "Golf Course Management Measures" contained in Hawaii's Coastal Nonpoint Pollution Control Management Program.
68. Applicant shall prepare an integrated golf course management plan ("IGCMP") for the review and approval of the Planning Director. The IGCMP shall address the design, construction, maintenance, and operation of the golf course. The design, construction, maintenance, and operation of the golf course shall be in compliance with the IGCMP. The IGCMP shall contain specific best management practices (BMP's) for the golf course.
69. The goals of the IGCMP will be to:
  - A. minimize the offsite transport of nutrients, sediments, herbicides, and pesticides;
  - B. minimize the use of fertilizers, herbicides, and pesticides through integrated pest management, fertility testing, and proper course design;
  - C. implement surface and groundwater conservation;
  - D. to operate safely considering the public usage in the vicinity;
  - E. prevent any harm to native biota in anchialine ponds and to the shoreline and offshore environment.
70. The IGCMP shall contain, at a minimum, the following requirements:
  - A. The golf course shall be designed so that surface drainage is not directed into anchialine ponds or the ocean;
  - B. Fairways, greens and tees shall be sited on a base of medium textured soils, with adequate cation exchange capacity to hold nutrients. Soil permeability shall be between 0.2 to 6.0 inches/hour;
  - C. In the area within 500 feet of the shoreline, the turf area shall be limited to the fairways, greens, and tees, to reduce the areas that must be irrigated and fertilized;

- D. Fairway turf shall be Seashore Paspalum, or an equivalent grass that is tolerant to brackish water irrigation, and hardy in hot coastal environments;
- E. Exposed soil areas shall be minimized during construction. Planting of grassed areas shall follow the installation of topsoil as soon as possible. The contractor shall apply dust screens, temporary soil covers and silt fences as needed. All exposed soil shall drain to a sediment trapping device;
- F. Operator shall develop and implement an integrated pest management plan with the intent of minimizing use of herbicides and pesticides. The operator shall first attempt to control weeds and pests by biological or cultural (non-chemical) means, and utilize chemical controls only after cultural means have proven infeasible. The operator shall use the least toxic chemical control at the lowest effective dosage, and shall use spot application wherever feasible. Pesticides and herbicides shall be sprayed at the lowest possible height and only when wind speeds are under 10 mph. Chloropyrifos shall not be used. The integrated pest management plan shall be reviewed by an IPM certified specialist;
- G. A qualified golf course superintendent shall control the fertilization and use of agricultural chemicals;
- H. All fertilizers, pesticides, and herbicides shall be stored in a covered maintenance area designed to contain any spill with structural barriers;
- I. Fertilization shall be based on actual plant needs as determined by leaf testing or other objective method;
- J. Fertilizers shall be "slow-release" to the extent feasible;
- K. Equipment wash area shall be set up so that oil and grease can be removed before it enters the storm drainage system;
- L. Operator shall control the timing of irrigation to follow actual plant needs, rather than on a set schedule;
- M. Grass clippings shall be used as a mulch or soil amendment;



- N. Greens and tees within 1,000 feet of the shoreline shall have a lining system to reduce potential leaching of nutrients and agricultural chemicals.
71. The applicant shall implement an integrated pest management plan with the same general conditions as the golf course plan for developer-controlled or developer-maintained landscaping (i.e. areas outside private lots, or installed by developer within private lots.) Fertilizers for developer-controlled or developer-maintained landscaping shall be slow release to the extent feasible.
72. The developer shall provide all lot owners educational materials about the sensitivity of the coastal waters and anchialine pond ecosystems, and the importance of limiting use of fertilizers, herbicides, and pesticides, and a suggested integrated pest management plan for problems that the homeowners may face, including termite protection.
73. The applicant shall allow play on the golf course by the general public a minimum of one day per week.
74. To manage the exercise of traditional and customary native Hawaiian rights on the property, the Planning Director shall appoint a three-member Kohanaiki Cultural Committee ("KCC"). The members shall be selected from individuals nominated by the Kohanaiki Working Group and the landowner, and shall be persons knowledgeable about the cultural resources and practices in the area. The decisions of the KCC shall be by majority vote if they are unable to achieve consensus. They shall serve for four years. At the end of the four year term, the KCC process shall be re-evaluated by the Planning Commission.
75. The intent of the KCC is to provide a means to implement the native Hawaiian gathering and access rights delineated by the Hawaii Supreme Court in the PASH and Ka Pa'akai decisions, while respecting the rights and interests of the private landowners.
76. The KCC shall have jurisdiction over the following:
- A. gathering of 'opae 'ula from the anchialine ponds;
  - B. gathering of native plants (those found in the Hawaii before human arrival, and Polynesian introductions) in the public use area of the park

(approximately 45 acres) and in the Mamalahoa Trail 50-foot preservation buffer; and

- C. traditional and customary access for cultural purposes, to those historic sites identified on the archaeological surveys that are required to be preserved, on private land (except for burials).
77. There shall be no gathering of 'opae 'ula except as allowed by the KCC. Any gathering shall be by traditional methods only. In deciding whether to allow gathering of 'opae 'ula, the KCC shall give first priority to the long-term conservation of the resource, and shall seek the advice of the Pond Manager. At least 50 percent of the pond areas that contain 'opae 'ula shall be protected from gathering.
78. The Pond Manager and public and private entities shall seek the advice of the KCC before undertaking major anchialine pond restoration projects.
79. In allowing gathering of plants, the KCC shall give first priority to the long-term conservation of the resource. If the KCC decides that certain plants are sufficiently abundant, or can be gathered without harm, it can allow such gathering generally and not on a case-by-case basis.
80. The jurisdiction of the KCC with respect to gathering applies to gathering by the general public, because such gathering needs to be managed to preserve the resource on which the exercise of customary rights depends. A violation of the KCC's requirements regarding gathering can be enforced as a violation of this SMA permit by the Planning Director against any offender.
81. In deciding on who has traditional and customary access rights to historic sites on private property, and on what conditions, the KCC shall consult with the private landowners involved before granting any access, and shall consider that:
- A. the PASH decision emphasized that the "non-confrontational aspects of traditional Hawaiian culture should minimize potential disturbances";
  - B. the PASH decision does not authorize "unreasonable or non-traditional uses"; and
  - C. the extensive oral histories regarding this property do not show any traditional activities that involve significant noise or lengthy visits.

82. Access to burial sites is under the jurisdiction of the Burial Council and shall be as provided in the approved Burial Treatment Plan.
83. The private landowner or landowners may also allow access voluntarily, without involvement of the KCC, to the extent consistent with the Burial Treatment Plan and Preservation Plan.
84. All decisions of the KCC shall be reported to the Planning Director, the applicant, and any affected private landowner.
85. The Director, in consultation with the National Park Service, shall review the potential for groundwater contamination by oil and by termiticides and impose such further conditions as may be necessary to protect the environment from contamination.
86. The applicant shall comply with all other applicable laws, rules, regulations and requirements of affected agencies including the Department of Public Works, Department of Water Supply, Department of Transportation and Department of Health for development of the proposed project.
87. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this permit. 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.
88. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - (A) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - (B) Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - (C) Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - (D) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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.

### Use Permits

According to the applicant, the portion of the proposed golf course in the ML zoned district will be located on approximately 6.9 acres. The applicant has stated that additional facilities included as part of the golf course component include a maintenance building, refreshment kiosks/restrooms on-course, tennis courts, spa, exercise facilities and other resident-oriented facilities to be determined at the precise planning stage. Also planned are golf safety setbacks of 150 feet as set forth by Reese Jones in an article for the Urban Land Institute in 1953. This criteria has been the accepted standard for fifty years. Also proposed are outer boundary setbacks of 175 feet set forth by the ULI "Golf Course Development and Real Estate" in 1994. Although not formally adopted by the ASGCA, the recommendation is widely used on higher quality projects. According to the applicant, this project meets or exceeds the 1994 recommendation. A 63-acre portion of the championship golf course will be located on public land, and the applicant will retain an exclusive easement to operate and maintain the proposed golf course.

The Planning Director's approval recommendation does not, however, sanction the specific plans submitted with the application as they may be subject to change given the specific code and regulatory requirements of the affected agencies. The approval recommendation is based on the following findings:

**Rule 7 (Use Permits) of the Planning Commission's Rules of Practice and Procedure states that the Planning Commission may approve a Use Permit based on the certain criteria.** Section 7-6, Criteria for Granting a Use Permit, states:

"The Commission may approve a use permit upon finding that:

- "(a) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan;
- "(b) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties; and

"(c) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure."

**The granting of these requests will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan. The development of:**

- a) **an 18-hole championship golf course of approximately 7,250 yards and golf clubhouse, related improvements and appropriate ancillary uses within the Resort-Hotel (V-1.25), Village Commercial (CV-10), Multiple-Family Residential (RM-3), Single-Family Residential (RS-10), and Open (O) districts; and**
- b) **a major outdoor recreational facility (portion of an 18-hole golf course and related improvements) within the Limited Industrial (ML-10) zoned district**

is a permitted use through the Use Permit review process, provided that the Land Study Bureau's Detailed Classification System classifies the project site as having a master productivity rating of "C", "D" or "E". The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses as well as the goals and policies of the General Plan. Although golf courses are not specifically listed under the Zoning Code as a permitted use in the ML-zoned district, it is considered a "major outdoor recreational facility" and is therefore a permitted use in the ML-zoned district with a Use Permit.

The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the location and use of buildings, off-street parking, the percentage of lots that may be occupied, the density of population and land for trade, industry, residence or other purposes. The applicant is also requesting a concurrent Special Management Area Use Permit to establish the golf course and related improvements, 500 home sites and public coastal park facilities.

**The proposed project will complement the goals, policies and standards of, among others, the Land Use, Economic, and Recreational Elements of the General Plan.** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject area of the golf course as Resort, Low Density Urban, Medium Density Urban and Open. The Land Study Bureau's Detailed Land Classification System classifies soils within the project area as "E" or "Very Poor". While not typical of urban types of use due

to its extensive, structured landscaping and minimal amount of structures, a golf course does provide direct support of resort uses. Its proximity to resort areas is essential, for it provides a much desired recreational amenity for both tourists and residents alike.

**The desired use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or surrounding properties.** The proposed request, if approved, will allow the development of an 18-hole golf course and golf clubhouse, related improvements and appropriate ancillary uses within the Resort-Hotel (V-1.25), Village Commercial (CV-10), Multiple-Family Residential (RM-3), Single-Family Residential (RS-10), and Open (O) districts, and a major outdoor recreational facility (portion of an 18-hole golf course and related improvements) within the Limited Industrial (ML-10) zoned district. Approval of the applicant's request will allow a recreational amenity that is typically found in major resort areas. Furthermore, a golf course can be defined as another form of open space use, which will not severely detract from its current undeveloped and open character.

Appropriate mitigation measures as proposed by the applicant would preclude any substantial adverse impacts the proposed golf course may have upon coastal recreational and visual resources, public access to and along the shoreline, or upon the coastal ecosystem and adjacent Kaloko-Honokohau Historic National Park. The applicant has indicated that the most economical method for wastewater treatment is an on-site wastewater treatment plant, as there is no infrastructure to carry flows from the project site to the Kealakehe treatment plant. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements as represented by the applicant, and provided in accordance with existing County regulations, and additional conditions proposed in this permit. Likewise, any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing County erosion and sedimentation control regulations as well as standard construction practices, and additional conditions proposed in this permit. The applicant will be required to comply with the "Department of Health Guidelines for Golf Courses in Hawaii" dated June 2000, and "Golf Course Management Measures" contained in Hawaii's Coastal Nonpoint Pollution Control Management Program.

Based on the limited development in the vicinity of the project site, air quality is relatively good. However, there are periods of heavy volcanic activity, which increases particulate levels, resulting in substantial increases in ambient concentration of mercury and sulfur dioxide. Air quality analyses conducted as part of the Environmental Impact Statement determined that long-term air quality impacts associated with the project proposed at that time would not exceed state and federal thresholds. According to the applicant, this conclusion remains valid for the proposed project. Short-term air quality impacts are proposed to be mitigated by adhering to proper erosion control measures,

utilizing low emission mobile construction equipment, maintaining construction equipment engines, and using low sulfur fuel for construction equipment to the extent practicable. The project site is generally visible from various points between Keahole Point and the entrance to the Kona International Airport at Keahole to the north and along the Queen Kaahumanu Highway to the Honokohau Small Boat Harbor to the south. The project site is also visible from some points along the Mamalahoa Highway. According to the applicant, a view plane analysis was conducted to determine the potential impact of the proposed development on views from the Queen Kaahumanu Highway and the coastal pine trees. The analysis determined that there was no or minimal effect of the proposed development on the view from the Queen Kaahumanu Highway to the sea.

The project site is currently undeveloped, therefore existing noise from the site is minimal and limited to noise generated from beach usage. Existing noise sources that currently impact the project site are also minimal. Short-term potential noise impacts are limited to construction noise associated with earthmoving equipment. However, based on the distance from the project site to the closest residential developments, this impact is anticipated to be less than significant. The applicant will comply with the State Department of Public Health regulations concerning proper maintenance of construction equipment, as well as to limit construction activities between the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturdays. In 1997, the State Department of Transportation (DOT) Airports Division completed a report on noise impacts associated with the Keahole International Airport. A small portion of the northern part of the project site is located within a noise contour of between 55 and 65 dBA (decibels). The Federal Aviation Administration (FAA) considers residential uses to be compatible as long as residences are located within the noise contour below 65 dBA. The State DOT uses a stricter 60 dBA standard. No residential uses are proposed within these noise contours. The portion of the property above 55 dBA will be in golf course or beach park use. As a condition of the State Land Use Commission action that reclassified the property to Urban, the landowner was required to grant easements to the DOT that the airport could, if necessary, be allowed a greater noise impact on the property, and the landowner would have to soundproof any homes if there were a greater noise impact. In their letter dated September 8, 2003, the DOT has stated that "although the Federal Aviation Administration has recommended an aircraft noise limit of 65 DNL for noise-sensitive areas, the DOT Airports Division recommends a limit of 60 DNL. Due to Hawaii's open and outdoor living conditions, an exterior noise level of 65 DNL does not eliminate all risks of adverse noise impacts."

**The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection, and other related infrastructure.** Water is available under the June 15, 1999 Water Agreement between K-W Kau, LLC, K-W Kohanaiki, LLC and the County

Water Commission. Under this agreement, the Department of Water Supply agreed to allocate up to 1,907 units of water to Kohanaiki from wells located near the Mamalahoa Highway. The actual delivery of water to Kohanaiki from these wells would require the developer to install large mauka-makai pipelines and construct storage facilities. In addition, the possibility of on-site wells and a desalination plant to produce potable and non-potable water will be explored.

Access to the project site is from the Queen Kaahumanu Highway to the access parcel, TMK 7-3-9: 16, to a point makai of the Mamalahoa Trail, continuing westerly past an attended gate entryway into and around the residential community. The State of Hawaii owns the Mamalahoa Trail right-of-way which separates the 7.75-acre parcel from the remainder of the project site. The right-of-way separating the access parcel from the remainder of the project site is approximately 300-feet long by 20-feet wide. As the right-of-way lies within the Conservation District, a Conservation District Use Permit application has been filed with the Department of Land and Natural Resources. The proposed improvements across the approximately 30-foot wide Mamalahoa Trail include a 24-foot wide roadway or two 12-foot wide roadways separated by a median. The Queen Kaahumanu Highway has a 300-foot right-of-way. Private internal access will include a resident cart path with connection points to the coastal roadway and walkway.

A traffic analysis conducted as part of the Environmental Impact Statement for the previously proposed project determined that the project "should not appreciably impact the current level of service now experienced by motorists moving along the Queen Kaahumanu Highway in the vicinity of the project site." An updated traffic analysis determined that the current project will generate less traffic than the project previously proposed. Daily volumes will be less than 2,900 vehicles each way, compared to the previous estimate of 4,320 vehicles per day entering and exiting the site. Project traffic volumes during peak hours are also estimated to be less than previously determined. The 121 parking spaces for beach access are estimated to generate 10 trips per day, per space. According to the applicant, the proposed project will have minimal impact to future conditions on the highway and peak hour conditions will remain in acceptable ranges based on projected levels of service.

Because the DOT plans to convert the Queen Kaahumanu Highway to a four-lane, median divided highway, there will only be a limited number of intersections allowed where traffic can cross. The DOT expects to convert the Kohanaiki intersection to a right-in, right-out access only after the Queen Kaahumanu Highway is widened to four lanes. The Kohanaiki landowner is also investigating the possibility of sharing an intersection with either the O'oma II property to the north, or with the Kohanaiki Business Park, to reduce the number of intersections on the Queen Kaahumanu Highway.



If the applicant utilizes the present access point on the Queen Kaahumanu Highway as shown in the applicant's site plan dated September 5, 2003, and occupancy begins before the conversion of the Queen Kaahumanu Highway to a median-separated four-lane highway in this area, the applicant will be required to construct a fully channelized intersection meeting with the approval of the Department of Transportation, including a left-turn storage lane and right-turn acceleration and deceleration lanes. If required by the Department of Transportation after the Queen Kaahumanu Highway is converted to a median-separated four-lane highway, the applicant will be required to reconfigure its intersection to a right-in, right-out only, construct necessary improvements to the satisfaction of the Department of Transportation at its own expense, and highway-crossing intersection will be eliminated. If occupancy is to occur after the conversion of the Queen Kaahumanu Highway to a median-separated four-lane highway, the applicant shall construct a right-in, right-out only intersection, with necessary improvements, meeting with the approval of the Department of Transportation.

All utilities are available to the site. The nearest municipal wastewater facility is the Kealakehe wastewater treatment plant located 3.5 miles south of the site. However, there is no infrastructure to carry flows from the project site to the Kealakehe treatment plant. As such, the applicant states that the most economical method for wastewater treatment is an on-site wastewater treatment plant. Wastewater from the project will be collected and pumped to an on-site treatment facility located on the northeast corner of the property.

**The proposed use 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.** An archaeological inventory level of the project site is contained in the Kohana'iki Resort Community, Final Environmental Impact Statement, August 1986. The survey identified a total of 105 archaeological sites within the project site and provided general significance assessments and recommended general treatments for these sites. Subsequent investigations during the 1987 topographic survey and later data recovery work identified seven additional sites. (The number of sites reported in the application and the number in the archaeological reports do not match exactly because the application omits a few sites that are makai of the certified shoreline and hence not actually in the project area). There are numerous archaeological sites that have been data-recovered and are not required to be preserved. However, to the extent practicable, the applicant has stated that these sites will be preserved. The cultural history of these additional sites, including some that cannot be preserved, will be included in interpretive exhibits on the project site. The State Department of Land and Natural Resources Historic Preservation Division (SHPD) has also agreed with the developer's archaeologist's assessment of the sites that are considered significant and should be preserved. There are 18 such sites. (A line of ahu

running across the northern half of the property at a distance of 900 to 1,500 feet from the sea will be preserved; this is considered one site). Among the preservation sites are the seven sites that either contain burials or have features consistent with burials. According to SHPD's letter of September 17, 2003, the landowner must still prepare a Burial Treatment Plan, obtain approval of the plan from the Hawaii Island Burial Council, and prepare a Preservation Plan. These plans would contain the buffers around the various sites. The "preservation" sites are shown in yellow on the applicant's Exhibit 5-4. The "data recovery" sites that will be preserved are shown in green. As a condition of this approval, the applicant will be required to prepare and secure the Planning Director's approval of an archaeological preservation and data recovery plan prior to commencing any land alteration activities. Should archaeological features be discovered during construction, the applicant will be required to contact the State Department of Land and Natural Resources and secure their clearance prior to continuing with any development activities.

The coastal region of the project site contains a number of anchialine ponds consisting of one of the largest concentrations of ponds on the island of Hawaii. The ponds consist of brackish water containing several species of shrimp and a variety of vegetation types. The ponds undergo a natural process of senescence over time, changing from barren lava pools to pools with sediment bottoms and aquatic vegetation, and finally to partially filled marshes and grasslands. As the previous mapping was too general to accurately lot the proposed coast park improvements, the anchialine ponds on the site were remapped by Dr. Richard Brock. The current mapping efforts revealed 137 anchialine ponds. The conceptual site plan shows the proposed project substantially avoiding the anchialine ponds on the site. There are a few anchialine ponds within the 6<sup>th</sup> hole fairway and one near the 5<sup>th</sup> hole green that may be affected by golf course construction. However, these are very small ponds and only contain water at high tides. The ponds were not recognized as ponds in the 1986 survey.

A majority of cultural resources identified within the project site are situated within the ocean frontage portion of the project area. The applicant states that, "given the general nature of the proposed development (preservation of public use open space within the seaward portion of the ocean frontage area of the project site and location of potential cultural resources within the shoreline public access open space), and the evaluation of the native Hawaiian traditional and customary cultural practices current within the project area, the development would likely have minimal potential adverse impacts upon either identified cultural resources or the various cultural resources users."

The applicant conducted an extensive oral and documentary history of the area (Exhibit A in the application). The kupuna informants discussed many cultural resources, including the Mamalahoa Trail, a coastal trail, loko kai and wai'opae (anchialine ponds

where native shrimp and fish were cultivated), burials, and various other sites and features.

Public access to the shoreline is by one of two jeep trails. The primary access extends from the NELHA/HOST Park access road along a coastal trail fronting the adjacent O'oma II property and enters the project site at the northwest corner. Secondary public access is by a rough jeep trail extending down in the vicinity of the northern property line directly from the Queen Kaahumanu Highway. This trail connects with the NELHA/HOST Park trail near the northeast corner of the project site. There is no documentation of public rights to use this jeep trail. From this point, a single jeep trail extends along the entire coastal frontage of the project site. The coastal jeep trail is approximately on the alignment of an older pedestrian trail from the Hawaiian period. The applicant proposes to construct a new mauka-makai road along its northern border with O'oma II, which would connect with a new lateral public access road that would run roughly parallel to the existing coastal jeep road, but inland. The lateral access road is planned to avoid anchialine ponds and archaeological sites. The lateral access road would end near Wawahiwaa Point, and public access would continue to the southern boundary as a pedestrian trail. After the lateral public access road has been completed, the present coastal jeep road would become a pedestrian trail. The Department of Land and Natural Resources opposes continued vehicular use of the jeep road and wants the trail to become part of the Ala Kahakai trail system.

According to the Flood Insurance Rate Map (FIRM), the subject properties are located in Flood Zones "VE" and "AE". As recommended by the Department of Public Works, a drainage study of the project site will be required and drainage system shall be constructed, meeting with the approval of the Department of Public Works prior to the commencement of operations of the golf course.

Regarding traditional and customary Hawaiian rights:

Investigation of valued resources: The Planning Commission has the following information from which it can determine the valued cultural, historical, and natural resources within the project area:

- Cultural Resources and Potential Users: Cultural Impact Issues Study, Kohana'iki Development Project, July 2003
- Kohanaiki Ma Kekaha Wai 'ole o na Kona, a report on archival and historical documentary research and oral history interview for the ahupua'a of Kohanaiki
- Anchialine Pond Management Plan, by Richard Brock, Ph.D., October 2002

- Botanical Survey, excerpts from the Kohana'iki Resort Community, Final Environmental Impact Statement, August 1986
- Faunal Survey, from FEIS, August 1986
- Minutes of the Kohanaiki Working Group and public meetings which

The valuable cultural, historical, and natural resources found in the project area:

Historical sites, as described in the various archaeological reports submitted by the applicant and as described in the cultural impact assessment and oral history, including the coastal trail, Mamalahoa Trail, petroglyphs, ilina (burial sites), paena wa'a (canoe landing), poho pa'akai (salt basins) and poho palu (bait cups). (Some of these are actually located in the coastal zone makai of the certified shoreline and hence outside of the SMA.) The botanical report revealed the existence of some plants occasionally used by native Hawaiians: majapilo or pua-pilo (a medicinal plant), 'uhaloa (a medicinal plant), pili grass (used for thatch), 'ilima (an ornamental flower), and makaloa (a sedge used for mats). There is no evidence that these plants are particularly sought out or used from this area.

Existing fauna at the project site include 13 bird species, including the House Finch, Japanese White-eye, Great Frigatebird ('Iwa,) Black-crowned Night Heron, ('Auku'u), Pacific Golden Plover (Kolea), Grey Francolin, rock dove, zebra dove, common barn own, Melodious Laughing-thrush, Nutmeg Mannikin, Yellow-billed Cardinal and the Northern Cardinal. There is no evidence of any traditional or customary use of these bird species in the project area. The only mammalian species on the site was the mongoose, found during the EIS survey. There was no sign of the endangered Hawaiian Hoary Bat.

- Anchialine ponds, which contain a number of native shrimp, including the 'opae'ula, which was sometimes gathered for bait
- The project site borders the shoreline and ocean. Therefore, possible negative effects on the shoreline and coastal waters must be considered as part of the review process. The shoreline and ocean waters contain various marine organisms (primarily fish and shellfish) commonly used by native Hawaiians (and others), in an environment of very clean water.

Possible adverse effect or impairment of valued resources: The proposed development will require site grading and grubbing, and construction of various

improvements such as roadways, buildings, and a golf course. These activities will cause major changes to the vegetation types which presently exist at the project site. Vegetation cover and density will increase and changes in species composition will be introduced through landscaping and natural processes. The proposed development will result in the loss of a number of native plants. However, these plants are found in similar habitats throughout the general area. Native plants can continue to grow within the natural lava. Almost all of the physical alteration of the site would occur on what the botanical study describes as the "scrub vegetation" zone - pahoehoe lava with a sparse cover of grass and scattered kiawe trees. Most native plants are found in the 45+ acre coastal area that will remain in a largely natural condition. Of the plants with some traditional use, 'uhaloa and 'ilima are extremely common elsewhere, and will be retained within the Mamalahoa Trail buffer and the 45+ acre coastal area. Pili grass will also continue to be found within the trail buffer and coastal area. Maiapilo is not widely distributed; it is found only in low dry coastal lava environments such as Kohanaiki, but many individual plants can be found within the coastal area and along the Mamalahoa Trail buffer. Makaloa is found only near the anchialine ponds and would be preserved within the pond buffers.

The proposed development will also alter the existing fauna on the site. The landscaping of large areas presently consisting of pahoehoe lava will create non-native habitat areas. Existing on-site species will be dislocated as part of the project development.

If the applicant follows the proposed mitigation measures, there should be minimal impact to archaeological and historic resources. Impacts to historic and archaeological resources associated with the State-owned Mamalahoa trail, which will be crossed by the main entry roadway to the project site, may occur. The crossing location was selected in part for its minimal impact upon the trail. The proposed project may also result in beneficial archaeological/historic impacts, including documentation and preservation of historic sites and archaeological artifacts. The cultural history of some archaeological sites will be included in interpretive exhibits on the project site.

Feasible actions to protect native Hawaiian rights: Potential cultural resources most likely to be considered as traditional cultural properties within the subject area include stone cairns marking land boundaries, roads, trails, canoe landings, ceremonial site, petroglyphs, burial sites, anchialine ponds and animal pens. Cultural practices include activities such as salt making, food procurement, aquaculture, fire making, food processing, tool and implement fabrication, weaving, canoe construction and story telling. The great majority of the potential cultural resources identified within the project area are located within the ocean frontage portion of the project area, within the area that will be in public park. According to the cultural impact assessment prepared by the applicant's consultant, virtually all of the natural and cultural resources related to traditional and

customary cultural practices are found either within or easily accessible from the public use portion of the project area immediately adjacent to the shoreline. Given that the applicant has committed to providing easily accessible and improved public use open space along the ocean frontage portion of the project area, and the location of potential cultural resources within the shoreline public access open space, the development should have minimal potential for adverse impacts to identified cultural resources or the various cultural resource users.

The actual use of the natural resources located along the shoreline, such as fishing or gathering of 'opihi, is regulated by state fish and game laws of general application. There are a number of anchialine ponds on the project site. Based on the record, there may be a traditional and customary right to gather 'opae 'ula from the anchialine ponds. At the same time, these shrimp are confined to a rare, diminishing, and threatened ecosystem. Traditional Hawaiian use of natural resources incorporated long-term conservation through a kapu system. Stewardship balanced usage. Currently, no laws exist that specifically limit the taking of 'opae 'ula, although some general laws like net sizes would apply. It would not fulfill the mandate to protect the resources that support the exercise of traditional rights to allow uncontrolled taking of 'opae 'ula.

There may also be a traditional right of access by some native Hawaiians to culturally-important sites on private property, but it is necessary to have a mechanism to determine who has a legitimate right of access, and to balance the exercise of that right with the interests of the private property owners.

The approval of this request, to allow the development of:

- a) an 18-hole championship 7,250-yard golf course and golf clubhouse, related improvements and appropriate ancillary uses within the Resort-Hotel (V-1.25), Village Commercial (CV-10), Multiple-Family Residential (RM-3), Single-Family Residential (RS-10), and Open (O) districts; and
- b) a major outdoor recreational facility (portion of an 18-hole championship golf course and related improvements) within the Limited Industrial (ML-10) zoned district

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. Prior to the commencement of construction of the golf course and other non-residential structures and facilities, Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code. Development plans shall identify all proposed structures, fire protection measures, paved driveway accesses and parking stalls and other improvements associated with the proposed uses. As required by the Zoning Code, all structures in V, CV, and ML zone shall obtain Plan Approval. The development plans shall reflect uses as substantially represented in this application. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
3. The applicant shall file with the Planning Department the current names, telephone and pager numbers of at least two (2) contact persons who have authority to order immediate corrective actions (including cessation of activity) should there be problems during the project construction phases.
4. The golf course, clubhouse, and tennis/athletic facilities shall be developed according to the following:
  - A. exterior night lighting for the golf course and related uses shall be downlighted, shielded and comply with the applicable County of Hawaii lighting ordinance;
  - B. prohibition of night lighting on the golf course for night golf;
  - C. prohibition of night lighting for evening operations of the driving range, with the exception of ambient lighting from other uses;
  - D. prohibition of amplified sound for clubhouse or other facility functions after 10:00 p.m.;
  - E. operation of maintenance vehicles shall be prohibited between the hours of 10:00 p.m. and 6:00 a.m., with the exception of emergency repairs and maintenance during golf tournaments;
  - F. exterior night lighting for tennis courts within the project site shall be downlighted, shielded and comply with the applicable County of Hawaii lighting ordinance.

5. All project utilities shall be underground. Applicant shall make a good-faith effort to obtain permission from the Department of Transportation to underground the main utility line crossing the Queen Kaahumanu Highway.
6. The applicant shall construct all necessary water system improvements prior to occupancy.
7. The applicant shall consult with the State Department of Land and Natural Resources-Commission on Water Resource Management and the County Department of Water Supply regarding the provision of appropriate buffers from any potable water wells within the affected area to ensure the protection of these water sources. Approved buffers shall be incorporated in plans submitted for Plan Approval Review.
8. A detailed drainage study shall be prepared by the applicant for review and approval by the Department of Public Works, National Park Service, and the Department of Land and Natural Resources prior to submittal of plans for Final Plan Approval. A drainage system shall be installed meeting with the approval of the Department of Public Works.
9. Unless superceded by a Planned Unit Development or Subdivision Code variance, the applicant shall plan and construct all roadways, except for the lateral coastal public access road, in accordance with the Subdivision Code and Ordinance No. 88-159 or successor ordinance. A dedicable turnaround shall be provided on the County road side of any security gate.
10. Install street lights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division.
11. If the applicant utilizes the present access point on the Queen Kaahumanu Highway as shown in the applicant's site plan dated September 5, 2003, and occupancy begins before the conversion of the Queen Kaahumanu Highway to a median-separated four-lane highway in this area, the applicant shall construct a fully channelized intersection meeting with the approval of the Department of Transportation, including a left-turn storage lane and right-turn acceleration and deceleration lanes, and street lighting. If required by the Department of Transportation after the Queen Kaahumanu Highway is converted to a median-separated four-lane highway, the applicant shall reconfigure its intersection to a right-in, right-out only, construct necessary improvements to the satisfaction of the Department of Transportation at its own expense, and highway-crossing intersection will be eliminated. If occupancy is to occur after the conversion of



the Queen Kaahumanu Highway to a median-separated four-lane highway, the applicant shall construct a right-in, right-out only intersection, with necessary improvements, meeting with the approval of the Department of Transportation, unless the Department of Transportation determines that this should be a through intersection, in which case applicant shall construct a full channelized intersection meeting with the approval of the Department of Transportation.

12. The applicant shall make a good faith effort to have a combined highway access with TMK 7-3-009: 022, the O'oma II property, ("Parcel 22") using the Department of Transportation-approved access point on Parcel 22. The common intersection shall be constructed with improvements meeting with the approval of the Department of Transportation. "Good faith effort," in the context of this condition, means that the applicant will (1) attempt to negotiate terms of common usage of such access point with the owner of Parcel 22; and (2) attempt to secure all other approvals, including governmental permits, necessary to utilize said access point for the Kohanaiki property. The applicant is not required to finalize arrangements for a common access on Parcel 22 if doing so will delay occupancy of the Kohanaiki project, or if permit applications result in contested case proceedings with adverse parties, or if the applicant cannot obtain rights to cross TMK 7-3-009: 014 on reasonable terms. The owners of Parcel 22 and the applicant (and any other landowners using the access point on Parcel 22) shall share the cost of constructing said common intersection. If they are unable to agree, the costs shall be determined by binding arbitration. This condition shall be in effect only if a corresponding condition is made applicable to Parcel 22 in a rezoning or other land use approval, requiring Parcel 22 to provide a common intersection. If a common access is established and developed on Parcel 22, the present Kohanaiki parcel access on TMK 7-3-09:016 shall be extinguished.
13. The applicant shall allow use of its access intersection and access roadway within TMK 7-3-09:016 by TMK 7-3-009: 018 and 014, unless access is available to TMK 7-3-09:014 on Parcel 22. The access shall include a right-of-way that enables TMK 7-3-09:018 to have access to the common intersection on Parcel 22, if one is established. Other landowners shall bear the fair share of cost if and when they utilize the access for future development.
14. No lots shall have direct access from the Queen Kaahumanu Highway except through an access point approved by the Department of Transportation Highways Division.
15. The applicant shall retain a 50-foot wide undisturbed buffer of natural lava along the makai side of the Mamalahoa Trail (measured from the edge of the trail) and

an additional 60-foot buffer without structures, unless the Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) recommends a wider buffer in the Preservation Plan.

16. The Mamalahoa Trail shall not be breached, except where crossed by the access road, without permission from the State of Hawaii.
17. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to issuance of a Certificate of Occupancy.
18. A Solid Waste Management Plan shall be prepared and submitted for approval to the Department of Public Works prior to submitting plans for Final Plan Approval. Approved recommendations and mitigation measures shall be implemented in a manner meeting with the approval of the Department of Public Works.
19. All wastewater shall be treated at an approved wastewater treatment plant, to a minimum of secondary treatment, with R-2 effluent, unless a greater level of treatment is required by the Department of Health. The wastewater treatment plant shall have a standby generator to operate the plant in the event of a power outage. Wastewater shall be used for irrigation of landscaping or other beneficial reuse to the maximum extent feasible. If treated on-site, wastewater shall be beneficially re-used for golf course and/or landscaping irrigation to the extent feasible.
20. The applicant shall use best efforts to obtain a non-potable water source for golf course and landscaping irrigation, rather than use high quality well water.
21. The applicant shall submit a study of the non-potable water system that demonstrates that there will be no significant negative environmental effects on the anchialine ponds on the property, or in the Kaloko-Honokohau National Park, from the injection of brine from a reverse osmosis system, if one is used for the project, or from the applicant's withdrawal of non-potable water from wells, if that is the source of non-potable water. The Planning Director shall review and approve the study, in consultation with the National Park, before the construction of the non-potable water system.

22. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
23. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires a National Pollution Discharge Elimination System (NPDES) permit. Best Management Practices shall be included as part of the NPDES permit.
24. The applicant shall contact the Army Corps of Engineers to identify whether a Federal permit (including a Department of Army permit) is required for this project. The applicant shall notify the Planning Director in writing, whether such permit is required for the development of the proposed project.
25. The applicant shall obtain approval of interim and final preservation plans by the State Historic Preservation Division. With the cooperation of the State, the preservation plan shall include sites on state property makai of the certified shoreline. The preservation plan shall specify interim and final preservation buffers. The interim preservation plan shall include fencing of preservation sites that may be affected by construction. All sites identified for preservation on the SHPD-approved list shall be preserved. In addition, "data recovery" sites shown in green on Exhibit 5-4 shall be preserved. These "green" sites may be returned to "data recovery" status if changes must be made to the current construction plans that makes their preservation infeasible.
26. The applicant shall complete a data recovery report to the satisfaction of the State Historic Preservation Division.
27. All preservation sites and burials shall be entered as archaeological easements on subdivision maps, unless the burial sites are declared "sensitive" by the Burial Council and not to be disclosed.
28. The applicant shall prepare and implement a plan for the interpretation of selected historical sites, in consultation with the National Park Service, the SHPD, and knowledgeable community members.
29. The applicant shall prepare and obtain approval for a Burial Treatment Plan from the Hawaii Island Burial Council and shall implement the Burial Treatment Plan, prior to any land disturbing activities on the property, except for those that may be approved with an interim buffer around known burials as determined by the

Planning Director in consultation with the State Historic Preservation Division. All sites with burial features as identified in the archaeological studies shall be treated as known burial sites. All known burials are to be preserved in place unless otherwise authorized by the Hawaii Island Burial Council.

30. A public access plan, which shall include signage, shall be established and submitted for review and approval to the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division, prior to the issuance of any land alteration permits for activities within the project area.
31. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls 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.
32. The applicant shall develop and implement a groundwater and nearshore water quality monitoring program. The program shall be approved by the Planning Director in consultation with the Natural Energy Laboratory of Hawaii, the Ocean Recreation Council of Hawaii, (TORCH) and the National Park Service. The program shall be generally as proposed in the applicant's Comprehensive Ground and Coastal Water Monitoring Program. The first baseline testing shall be conducted no later than 12 months after the effective date of this permit.
33. The applicant shall develop and implement a marine life monitoring program, which shall include baseline studies and periodic repeat studies of nearshore marine life. The program shall be approved by the Planning Director in consultation with the Natural Energy Laboratory of Hawaii, the Ocean Recreation Council of Hawaii, (TORCH) and the National Park Service. The first baseline studies shall be completed prior to substantial construction on the project.
34. The applicant shall develop and implement an Anchialine Pond Management Plan. The plan shall be approved by the Planning Director, in consultation with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers. The Plan shall include appropriate buffers to prevent soil and construction materials from entering the ponds, and buffers against the use of agricultural chemicals (fertilizers, herbicides, and pesticides). There shall be a 40-foot buffer area around the ponds in which no substantial construction may occur. Allowable

construction and activities in the 40-foot buffer zone would be limited to construction of additional ponds, maintenance and restoration activities, construction of retaining walls to prevent fill or other materials from entering the ponds, or to mark pond boundaries, portions of the lateral public access road, cart paths, other similar low-impact construction, and plantings that will not result in degradation to the pond. All construction within the 40-foot buffer zone will require approval of the Planning Director. Turf or other plantings requiring irrigation and fertilization shall not be placed within 20 feet of a pond.

35. The applicant shall hire a pond manager.
36. The applicant or the pond manager shall remove sediment and exotic vegetation from selected anchialine ponds within two (2) years from the effective date of this permit.
37. All anchialine ponds on the property shall be preserved intact, except for the small area of ponds shown on the Site Plan in the middle of the 6<sup>th</sup> hole fairway, located in a depression in the lava, and a single pond shown on the Site Plan adjacent to the southwest side of the 5<sup>th</sup> hole green. Any pond disturbed or removed must be replaced by artificially created ponds at least twice in area, under the direction of the pond manager, and any applicable Corps of Engineers permits must be obtained.
38. The overall pond management/monitoring program shall be the responsibility of the applicant. The applicant shall monitor the pond areas in public ownership.
39. Within the non-golf public park areas, the routine pond maintenance and enforcement will be the responsibility of the public agency having jurisdiction over the public park area. Within the golf course area, routine pond maintenance and enforcement will be the responsibility of the applicant.
40. Any significant decline in ocean or anchialine pond water quality shall immediately be reported, in writing, to the Planning Director.
41. The applicant shall post signs prohibiting the introduction of fish in the ponds. Fish and other organisms not native to the ponds shall not be introduced to ponds where they are not already present.
42. The applicant shall register its course with Audubon International and use its best efforts to obtain and keep Audubon International certification at the "Silver" level for the golf course development.

43. The applicant shall comply with the "Department of Health Guidelines for Golf Courses in Hawaii" dated June 2000 and "Golf Course Management Measures" contained in Hawaii's Coastal Nonpoint Pollution Control Management Program.
44. The applicant shall prepare an integrated golf course management plan ("IGCMP") for the review and approval of the Planning Director. The IGCMP shall address the design, construction, maintenance, and operation of the golf course. The design, construction, maintenance, and operation of the golf course shall be in compliance with the IGCMP. The IGCMP shall contain specific best management practices (BMP's) for the golf course.
45. The goals of the IGCMP will be to:
  - A. minimize the offsite transport of nutrients, sediments, herbicides, and pesticides;
  - B. minimize the use of fertilizers, herbicides, and pesticides through integrated pest management, fertility testing, and proper course design;
  - C. implement surface and groundwater conservation;
  - D. operate safely considering the public usage in the vicinity;
  - E. prevent any harm to native biota in anchialine ponds and the shoreline and offshore environment.
46. The IGCMP shall contain, at a minimum, the following requirements:
  - A. The golf course shall be designed so that surface drainage is not directed into anchialine ponds or the ocean;
  - B. Fairways, greens and tees shall be sited on a base of medium textured soils, with adequate cation exchange capacity to hold nutrients. Soil permeability shall be between 0.2 to 6.0 inches/hour;
  - C. In the area within 500 feet of the shoreline, the turf area shall be limited to the fairways, greens, and tees, to reduce the areas that must be irrigated and fertilized;

- D. Fairway turf shall be Seashore Paspalum, or an equivalent grass that is tolerant to brackish water irrigation, and hardy in hot coastal environments;
- E. Exposed soil areas shall be minimized during construction. Planting of grassed areas shall follow the installation of topsoil as soon as possible. The contractor shall apply dust screens, temporary soil covers and silt fences as needed. All exposed soil shall drain to a sediment trapping device;
- F. Operator shall develop and implement an integrated pest management plan with the intent of minimizing use of herbicides and pesticides. The operator shall first attempt to control weeds and pests by biological or cultural (non-chemical) means, and utilize chemical controls only after cultural means have proven infeasible. The operator shall use the least toxic chemical control at the lowest effective dosage, and shall use spot application wherever feasible. Pesticides and herbicides shall be sprayed at the lowest possible height and only when wind speeds are under 10 mph. Chloropyrifos shall not be used. The integrated pest management plan shall be reviewed by an IPM certified specialist;
- G. A qualified golf course superintendent shall control the fertilization and use of agricultural chemicals;
- H. All fertilizers, pesticides, and herbicides shall be stored in a covered maintenance area designed to contain any spill with structural barriers;
- I. Fertilization shall be based on actual plant needs as determined by leaf testing or other objective method;
- J. Fertilizers shall be "slow-release" to the extent feasible;
- K. Equipment wash area shall be set up so that oil and grease can be removed before it enters the storm drainage system;
- L. Operator shall control the timing of irrigation to follow actual plant needs, rather than on a set schedule;
- M. Grass clippings shall be used as a mulch or soil amendment;

- N. Greens and tees within 1000 feet of the shoreline shall have a lining system to reduce potential leaching of nutrients and agricultural chemicals.
- 47. The applicant shall implement an integrated pest management plan with the same general conditions as the golf course plan for developer-controlled or developer-maintained landscaping (i.e. areas outside private lots, or installed by developer within private lots.) Fertilizers for developer-controlled or developer-maintained landscaping shall be slow release to the extent feasible.
- 48. The developer shall provide all lot owners educational materials about the sensitivity of the coastal waters and anchialine pond ecosystems, and the importance of limiting use of fertilizers, herbicides, and pesticides, and a suggested integrated pest management plan for problems that the homeowners may face, including termite protection.
- 49. The applicant shall allow play on the golf course by the general public a minimum of one day per week.
- 50. The applicant shall comply with all other applicable laws, rules, regulations and requirements of affected agencies including the Department of Public Works, Department of Water Supply, Department of Transportation and Department of Health for development of the proposed project.
- 51. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this permit. 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.
- 52. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.



Dave Eadie, CEO  
Rutter Development Corporation  
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- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year.)

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

Sincerely,



Fred Galdones, Chairman  
Planning Commission

Lrutterapp01PC

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/HPD - Kona  
Rodney Haraga, Director/DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Mr. Robert Usagawa  
Plan Approval Section

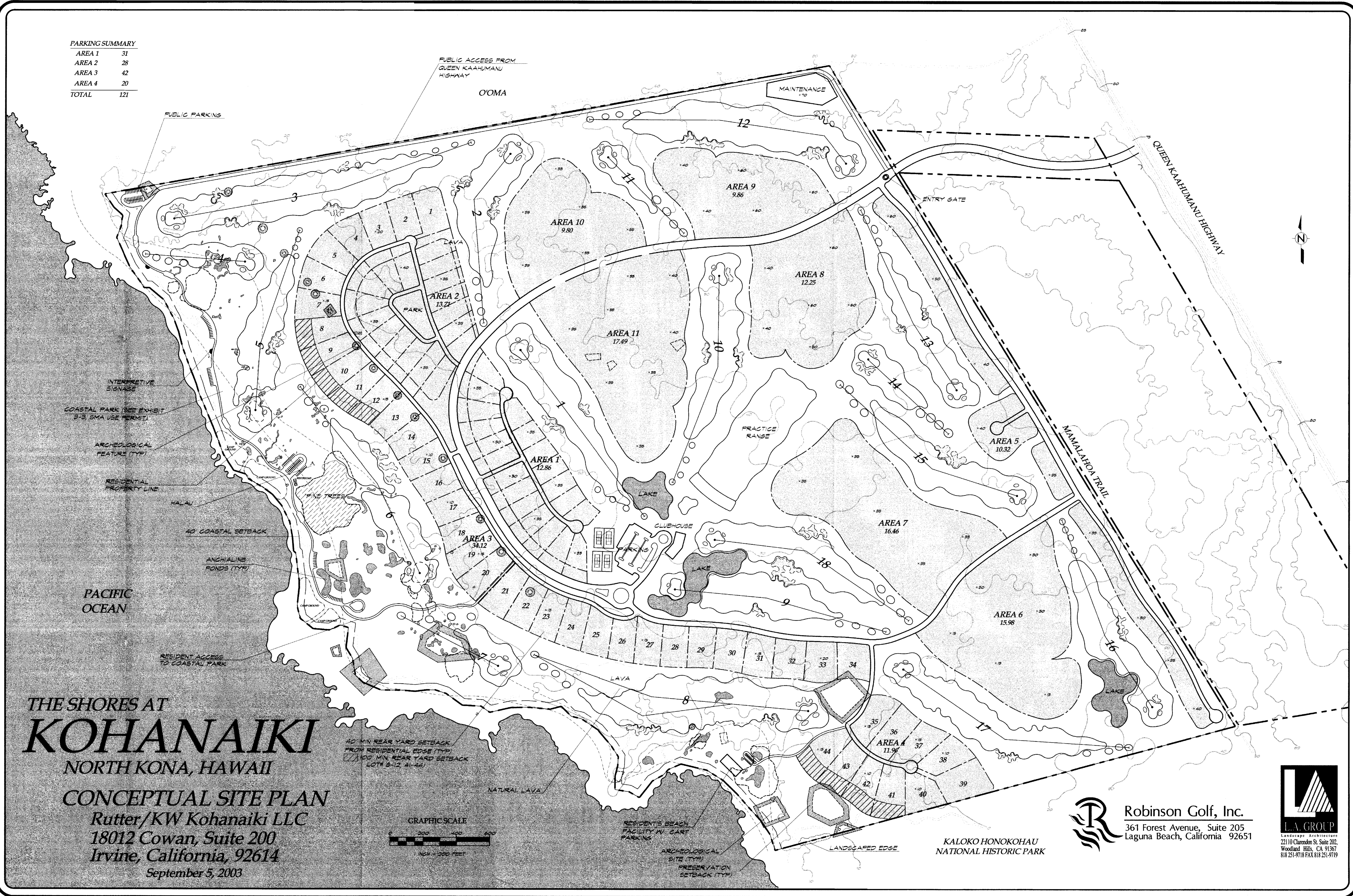


EXHIBIT 3-1: CONCEPTUAL SITE PLAN

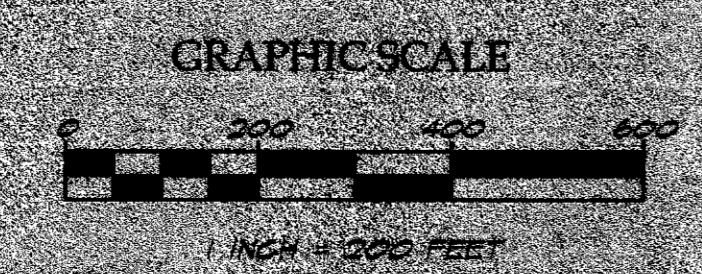
The Shores at Kohanaiki SMA  
Use Permit Petition  
Section 3

PARKING SUMMARY

AREA 1	31
AREA 2	28
AREA 3	42
AREA 4	20
TOTAL	121



THE SHORES AT  
**KOHANAIKI**  
NORTH KONA, HAWAII  
CONCEPTUAL SITE PLAN  
Rutter/KW Kohanaiki LLC  
18012 Cowan, Suite 200  
Irvine, California, 92614  
September 5, 2003



**Robinson Golf, Inc.**  
361 Forest Avenue, Suite 205  
Laguna Beach, California 92651



KALOKO HONOKOHAU  
NATIONAL HISTORIC PARK