

County of Hawai'i

PLANNING COMMISSION

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July 5, 2005

Sandra P. Song, Esq.
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Hilo, HI 96720

Dear Ms. Song:

Special Management Area Use Permit Application (SMA 04-009)

Request: Residential-Commercial Building With 68 Dwelling Units, 13,000 Square Feet of Retail Space, Pool, and Related Improvements

Applicant: KPC Villages, LLC

Tax Map Key: 7-5-9:23

The Planning Commission at its duly held public hearing on June 17, 2005, voted to approve the above-referenced request for a Special Management Area (SMA) Use Permit to allow the development of sixty-seven (67) multiple family residential units and commercial spaces within a 45-foot high structure, and related improvements. The property is located on the mauka side of Alii Drive across from Huggo's Resturant and the Royal Kona Resort Hotel complex, Kailua-Kona, Puaa 3rd, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse

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effect and elimination of planning options. The proposed commercial-residential complex consisting of multi-family units and commercial uses is expected to take approximately 18 months to complete, and includes:

- 67 multiple-family units in a maximum 45-foot high multi-story building, with 4 one-bedroom units and 63 two-bedroom units. The average unit size is approximately 1,084 square feet.
- 13,000 square feet of commercial space on the ground floor
- recreation deck with pool
- 92 underground residential parking spaces with access from the north driveway
- 45 ground level commercial parking spaces with access from the south driveway
- road reserve on the southern portion of the property for a future County road connecting Alii Drive with the Kuakini Highway.

The applicant is requesting a concurrent change of zone from Multiple-Family Residential 1,000 square feet (RM-1) to Resort 750 square feet (V-.75) to allow the proposed development.

The proposed project will not create significant adverse impacts upon nearby and immediately adjacent properties as the properties have been developed with apartments, condominiums, single family residences, and other urban uses. Surrounding properties to the east and south are zoned Multiple-Family Residential (RM-1) and are vacant. Properties to the north and west are zoned Resort (V-.75). There is a multi-story commercial complex to the north, and commercial development west of the property across Alii Drive. Given the project's proposed extensive landscaping, the visual impact to the surrounding areas will not be significant.

While the proposed development will not have a direct impact upon coastal recreational resources, review of developments within the Special Management Area must also consider the cumulative impacts of such developments upon these resources. The proposed development will not substantially affect scenic vistas or viewplanes of nearby residents nor have an adverse impact on coastal recreational or visual resources to the shoreline and coastal ecosystems. The property is located mauka of Alii Drive and will not restrict access to coastal recreational resources along the shoreline nor will it restrict existing visual viewplanes from Alii Drive. The existing coastal views of some

private properties mauka of the property may be affected, particularly for existing or future single-story buildings mauka of the proposed structure, with a maximum height limit of 45 feet. The view plane from the shoreline towards the property will not be impacted as surrounding properties to the north and west are improved with commercial developments.

Air quality in the area is predominantly affected by emissions from natural and vehicular sources. Both short-term air and noise quality impacts associated with the construction of the proposed improvements are expected during construction, especially during grubbing and grading activities. These impacts can be mitigated through the utilization of best management practices. Given the limited nature of the improvements, no significant long-term air and noise quality impacts are anticipated.

The proposed project 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. According to the Department of Water Supply, 73 units of water are required for the proposed development. Through participation in a previous waterline improvement project, the previous owners of the property secured a water commitment for 48 units of water. With additional waterline improvements along Alii Drive, water can be made available for the project. The Department of Water Supply requires the construction of the following improvements, should the change of zone request be approved:

- extend the existing 12-inch water main approximately 1,200 feet to front the subject parcel;
- install a service lateral to accommodate an appropriately sized meter to the development; and
- submit installation plans prepared by a professional engineer, registered in the State of Hawaii, for review and approval.

A condition will be included to require the applicant to construct the necessary improvements for the additional units of water.

The project will connect to the County sewer system. Any potential runoff or discharge that could reach ocean waters can be handled by on-site improvements consistent with the requirements of the Department of Public Works. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations and proper construction practices. Air emissions generated during the construction phase for the proposed project can be mitigated by existing construction regulations. With these precautionary measures in

place, the proposed development is not anticipated to have any substantial adverse effects upon nearby coastal resources or the surrounding environment. Conditions of approval will be included relating to wastewater, solid waste and public safety to ensure that impacts on coastal resources are minimized.

An archaeological survey was conducted by PHRI in 1987-1988 followed by a more intensive analysis of one of the sites (Site 50-10-28-2005) in 1988 (Appendix 1 and 2 of the application). This site was first identified in the 1930's during an archaeological survey of the coastline (Reinecke 1930). The site was interpreted as a dwelling compound consisting of a large stone-walled enclosure with a platform and a small enclosure, and corresponded to Land Commission Award 4140 to Kamanawa. The various features associated with Site 2005 were determined to be significant for information content only, with the possible exception of Feature A (house site), a platform measuring approximately 45 by 35 feet. Feature A, as identified in *Intensive Archaeological Survey and Limited Data Recovery Site 50-10-28-2005* (Rosendahl, April 1988) Figure 2, is located near the center of the property. In a letter dated August 9, 1988, during review of SMA Use Permit No. 276, the DLNR-HPD recommended the preservation of Feature A or additional minor archaeological investigation. The Planning Department recommended preservation of Feature A to then-owner Libbie Kamisugi. By letter dated March 8, 1989, the DLNR-HPD gave final approval to the archaeological survey. The current landowner has decided to perform additional data recovery on Feature A in lieu of preservation, and a data recovery plan for Site 50-10-28-2005 was prepared in 2004 for Feature A and the associated cultural deposit (Appendix 3 of the application). By letter dated June 23, 2004 (Appendix 4 of the application), the DLNR-HPD approved the proposed data recovery plan for the site.

An informal biological survey was conducted in September 2003. On this property, as is typical of the region, the vegetation is almost completely alien. Only one common indigenous plant, 'uhaloa (*Waltheria indica*) was found on the site. No systematic faunal survey was conducted. The alien vegetation and urban surroundings provide a habitat for a number of alien bird species such as the Yellow-Billed Cardinal (*Paroaria capitata*), Common Myna (*Acridotheres tristis*), Japanese White-eye (*Zoaterops japonicus*), and Northern Cardinal (*Cardinalis cardinalis*). Mongooses, feral cats, rats and mice inhabit the property. According to the applicant, it is highly unlikely that any native forest birds, seabirds or migratory birds (especially those with threatened or endangered status) would find the site a suitable habitat or be affected by activities that occur on the parcel. The Hawaiian Hawk or 'Io and the Hawaiian Owl or Pueo, possibly make some use of the area. The endangered Hawaiian Hoary Bat may also be present in the general area. According to the applicant, no rare, threatened or endangered species as listed by the U.S. Fish and Wildlife Service appear to be present on the parcel, nor are there unique or valuable wildlife habitats. No impact on native species or habitat is expected.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. The property is not proximate to the shoreline and will not be impacted by coastal hazard and beach erosion. No scenic or open space resources to the shoreline or coastal view plane or coastal ecosystem will be negatively impacted by the proposed action.

The proposed development is consistent with the County General Plan and the Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map establishes the basic urban and non-urban form for areas within the County. The subject area is designated Resort by the LUPAG map. Resort areas include uses such as hotels, condominium-hotels and supporting services. Thus, the proposed development would be consistent with the LUPAG Map designation. The property is presently zoned Multiple-Family Residential 1,000 square feet (RM-1) by the County. The applicant is requesting the concurrent Change of Zone from Multiple-Family Residential 1,000 square feet (RM-1) to Resort 750 square feet (V-.75). A condition of approval will be included to state that the effective date of the Special Management Area Use Permit shall be the effective date of the Change of Zone ordinance.

This proposed development would complement, among others, the goals, policies and standards of the Land Use and Housing Elements of the General Plan. The proposed project will add to the variety of housing inventory for the district of North Kona, and provide housing in areas that are appropriately located and serviced. The proposed project will be in harmony with the character of the surrounding neighborhood and result in an intensity of land utilization no higher than as permitted or as otherwise specified for the district in which this proposed development occurs. The Master Plan for Kailua-Kona, adopted by Resolution No. 371 98 effective September 6, 1996, identifies this area for resort/commercial mixed uses.

Two accesses are proposed from Alii Drive, a two-lane collector street with an approximately 20-foot wide pavement with paved shoulders within a substandard approximately 50-foot right-of-way. The lower level parking deck with 92 parking stalls for residents will have access from the north driveway. The upper level parking with 45 parking stalls for commercial use would be accessed from the south driveway. The Department of Public Works recommends that vehicular access to Alii Drive be limited to one approach and dedicate at no cost to the County, five (5) feet of additional right-of-way width (exclusive of the driveway approach) along the frontage of Alii Drive in conformance with collector street standards. The additional right-of-way would allow for one of several options including the preservation of the existing parking, left-turn lane installation or a transit vehicle loading zone.

The proposed project would add to the cumulative traffic impact on Alii Drive. In response to concerns about providing a roadway that would connect Alii Drive and Kuakini Highway, the design for the project includes a road reserve along the southern portion of the property that will be dedicated to the County for use as a road at a future date. Construction of the road will depend upon, among other actions, acquisition of similar road reserves from other landowners mauka of the property.

A Traffic Impact Analysis Report for the Ke Kai Alii Condominium on Alii Drive dated November 10, 2003 (Appendix 5 of the application) concluded that "the increases in ambient traffic due to new development projects in Kailua-Kona are forecast to have an adverse impact on the Alii Drive/Hualalai road intersection. Mitigation in the form of widening the northbound approach of Alii Drive would improve traffic operations to acceptable levels. The proposed project would generate a small number of trips that add to the cumulative traffic impact but not adversely affect traffic." With or without the proposed project, the intersection of Hualalai Road and Alii Drive will not operate at an acceptable level of service. The TIAR does not address the intersection of Walua Road and Kuakini Highway which is forecasted to be deficient as a result of ambient growth in the area.

According to the Department of Public Works, the Kailua Village Master Plan provides for a street connection (identified as the "Village Bypass") from Alii Drive to Kuakini Highway and Queen Kaahumanu Highway by an extension of Nani Kailua Drive. The southern portion of the property has been identified as a preferred location for the alignment of the Village Bypass. The applicant should be required to reserve and upon request by the Department of Public Works, provide the right-of-entry, slope easements and the proposed right-of-way at no cost to the County to allow for construction of the proposed Village Bypass. Vehicular access to the future Village Bypass may be restricted to right-in and right-out movements at the discretion of the Department of Public Works by the inclusion of a center median divider in the County street.

In view of the recent Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed. These rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: An archaeological survey was conducted by PHRI in 1987-1988 followed by a more intensive analysis of one of the sites (Site 50-10-28-2005) in 1988 (Appendix 1 and 2 of the application). By letter dated March 8, 1989, the DLNR-HPD gave final approval to the archaeological survey. By letter dated June 23, 2004 (Appendix 4 of the application), the DLNR-HPD approved the proposed data recovery plan for the site.

An informal biological survey was conducted in September 2003. On this property, as is typical of the region, the vegetation is almost completely alien. It is highly unlikely that any native forest birds, seabirds or migratory birds (especially those with threatened or endangered status) would find the site a suitable habitat or be affected by activities that occur on the parcel. According to the applicant, no rare, threatened or endangered species as listed by the U.S. Fish and Wildlife Service appear to be present on the parcel, nor are there unique or valuable wildlife habitats. No impact on native species or habitat is expected.

The valuable cultural, historical, and natural resources found in the area: In cooperation with the DLNR-HPD, the applicant has decided to perform additional data recovery on Feature A in lieu of preservation, and a data recovery plan for Site 50-10-28-2005 was prepared in 2004 for Feature A and the associated cultural deposit (Appendix 3 of the application). By letter dated June 23, 2004 (Appendix 4 of the application), the DLNR-HPD approved the proposed data recovery plan for the site.

Possible adverse effects or impairment of valued resources: Native vegetation maybe destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.

Feasible actions to protect native Hawaiian rights: The property is located mauka of Ali'i Drive, and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. As stated by the applicant, no gathering is taking place on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

Based on the above findings, it is determined that the proposed development and related improvements will not have any substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is subject to the following conditions.

1. The effective date of the Special Management Area Use Permit shall be the effective date of the accompanying Change of Zone Ordinance.
2. The applicant shall comply with all applicable conditions of the accompanying Change of Zone Ordinance.

3. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval of this permit.
4. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
5. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of a construction permit. The drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to receipt of a Certificate of Occupancy.
6. The proposed development shall connect to the County sewer system.
7. Comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
8. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
9. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
10. The U.S. Department of Army Corps of Engineers shall be contacted to identify whether a Federal Permit (including a Department of Army permit) is required for this project. The Planning Director shall be notified in writing as to whether such permit is required for the development of the project.
11. Should any undiscovered remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.
12. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the

status of the development and extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

14. An initial extension of time for the performance of conditions within this 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 this 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).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

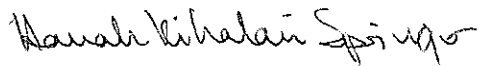
Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Sandra P. Song, Esq.
Page 10

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

Sincerely,



Fred Galdones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Department of Land and Natural Resources/HPD-Kona
Ms. Alice Kawaha