

## County of Hawai'i

### PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

June 16, 2006

Mr. Glen Koyama  
Belt Collins Hawaii, Ltd.  
2153 N. King Street, Suite 200  
Honolulu, HI 96819

Dear Mr. Koyama:

Special Management Area Use Permit Application (SMA 06-000010)  
Request: 5-Lot Subdivision and Related Improvements  
Applicant: Belt Collins Hawaii, Ltd.  
Tax Map Key: 5-9-17:1 - 7

The Planning Commission at its duly held public hearing on May 26, 2006, voted to approve the above-referenced application to allow the development of a 5-lot subdivision and related improvements. The property is located along the makai side of Akoni Pule Highway (Highway 270) and the Kohala Estates Subdivision, Kahuanui and Waika, North Kohala, 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. The applicant requests a Special Management Area Use Permit to allow a 5-lot subdivision and related improvements. The Kohala Kai Subdivision consists of seven (7) parcels ranging in size from approximately five (5) acres to twenty-eight (28) acres. The landowner is proposing to subdivide the 28-acre parcel into five (5) parcels, in addition to upgrading the

infrastructure and landscape for the other six parcels, but yet to be constructed. The upgraded improvements are estimated to cost approximately \$4.5 million. The proposed subdivision is intended to meet the demand for large, oceanfront lots in the north and south Kohala coast area. The applicant states that "the intended market for the new lots is the prospective buyer who wishes to live in a serene environment with abundant open space and ocean frontage away from build-up urban areas." The applicant wants the proposed infrastructure and landscape upgrades to enhance the quality and marketability of the property.

The project site, known as the Kohala Kai Subdivision, is a vacant, oceanfront property located along the makai side of the Akoni Pule Highway approximately 2.5 miles northwest of Kawaihae. The subdivision is located on approximately 4,100 feet of shoreline and extends inland about 900 feet from the shoreline to the Akoni Pule Highway.

The proposed project will not create significant adverse impacts upon nearby and immediately adjacent properties. Adjacent properties are zoned RS-15 to the northwest and RM-4 to the southeast. Properties mauka of the Akoni Pule Highway (Kohala Estates) are zoned A-3a and A-5a. Given the project's proposed 150-foot setback from the Akoni Pule Highway, landscaping, and proposed conditions regarding the line of sight to the sea, 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. With the proposed conditions, the development will not substantially affect scenic vistas or viewplanes of nearby residents nor have a significant adverse impact on coastal recreational or visual resources to the shoreline and coastal ecosystems.

The project will maintain view corridors and scenic resources in the project area, including mauka-makai views and lateral views along the shoreline. The applicant proposes to provide infrastructure and landscape improvements designed with sensitivity to the land and surrounding areas. To mitigate potential interference with viewplanes from the Akoni Pule Highway, structures shall be limited to a maximum height of twenty-five (25) feet. The 25-foot height limit is included in Condition No. 2 because under the Zoning Code, the height of a structure with a pitched or gable roof is measured by the average height of the highest gable. Using this Zoning Code method of calculating the height of a structure, it is possible to construct a very tall structure. The permit will also require a 100-foot setback from the certified shoreline to retain a greater sense of coastal open space and lateral shoreline views. All utilities will be underground. Motorists traveling on the Akoni Pule Highway will have views of the ocean. The embankments on the makai side of the Akoni Pule Highway fronting the project site form occasional view

obstructions for the motorists, but there are panoramic views of the ocean and the coastline along the highway. The Natural Beauty element of the General Plan identifies the view from Akoni Pule Highway to the sea as an example of natural beauty. Senate Concurrent Resolution No. 179 (1988) states that "the State and the County governments are urged to work together in a collaborative effort to ensure that the public view and open space currently existing makai of the Kawaihae-Mahukona-Hawi Road be preserved."

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. Water is available to the project site from the Kohala Ranch Water Company. The applicant is working with the Kohala Ranch Water Company to secure water for the development. Lot owners will install their own individual wastewater disposal system, meeting with the approval of the Department of Health. 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.

Paul H. Rosendahl, Ph.D., Inc. (PHRI) conducted archaeological inventory surveys in 1991 and 1992 and the findings were included in a study titled, *Archaeological inventory Survey Kahua makai/Kahua Shores Coastal Parcels* dated April 1995. The survey covered 103 acres of coastal land including the project site. Within the Kohala Kai site, the survey identified 29 archaeological sites consisting of 87 features. In December 2003, an Archaeological Mitigation Plan was prepared by PHRI for the identified sites (Appendix A of the application). The Archaeological Mitigation Plan, which includes proposed preservation measures for 6 sites, extensive data recovery measures for 10 sites and limited data recovery for 13 sites, was approved by the

Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) in May, 2004. Two of the six sites (Sites 2491 and 16130) recommended for preservation are burials and will be preserved in place. The Burial Treatment Plan was approved by the Hawaii Island Burial Council in February, 2004 and the DLNR-HPD in December, 2004. Access to the burials will be provided by pedestrian access easements. The remaining preservation sites will be preserved in perpetuity by the establishment of preservation easements. The archaeological mitigation plan approved by the DLNR-HPD and the Burial Treatment Plan approved by the Hawaii Island Burial Council and DLNR-HPD will be implemented prior to the commencement of any construction activity on the site.

In the late 1990's, Site 2489, a habitation feature, was disturbed and transformed into a modern religious feature by a group of individuals who occupied the site without authorization from the landowner. An individual spearheading the group claimed lineal descent from James Austin, owner of Kahuanui at the time of the Boundary Commission hearings in 1873. PHRI proposed that the site be restored to its original condition, and the recommendation is included in a restoration plan approved by DLNR-HPD in January, 2004. Given the site's location within and adjacent to the shoreline pedestrian access and the fact that the site has been identified for preservation, Rechtman Consulting is proposing that the archaeological site instead be preserved "as is" i.e., in its present state. Rechtman Consulting also recommended that an interpretive sign be placed along the public access explaining the circumstances surrounding the altered feature. A pedestrian inspection was conducted by PHRI to determine if any portion of a jeep road crossing the coastal portion of the project area could be identified as the Ala Loa trail but no such evidence was discovered.

A cultural impact assessment titled *Cultural Impact Assessment Associated with the Proposed Development of Kohala Kai, January 2006* is included as part of this application (Appendix C). The study noted that none of those interviewed had knowledge of any specific traditional cultural practices currently being exercised on the site, although shoreline is actively being used as access for coastal fishing. According to the applicant, no valued cultural, historical or natural resources appear to exist on the property there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site

A botanical study conducted by Char & Associates in 1994 stated that the project site consisted mostly of buffel grass with scattered kiawe trees. A few native species such as pili grass, pau o hiiaka, ilima, alena and uhaloa were also identified on the site. Twenty-nine (29) plant species were found. Of these, twenty-four (24) were introduced or alien species and five (5) were native species. None of the species were listed as threatened or endangered, and none were proposed or candidate for such status.

There are three 20-foot wide public pedestrian and access easements identified in the subdivision. Easement 35 runs along the northernmost lot in the subdivision, Easement 37, a 20-foot wide lateral shoreline public access, runs along the entire length of the subdivision on the coastline, and Easement 36 is located along the southwestern corner of the subdivision. The public access easements will be maintained as part of the development and will serve to mitigate any impacts relating to coastal access and the use of the shoreline for ocean activities. A condition will be included requiring that the public pedestrian and access easements be improved for public use. This may involve a relocation of Easement 35, which is a straight line and may not be a practical trail alignment. The condition will also require parking.

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 Low Density Urban, and Open along the shoreline by the LUPAG map. The proposed project will create seven 5-acre lots consistent with the other five-acre lots in the subdivision. The property is zoned Agricultural (A-5a) by the County, which allows for agricultural, single-family dwellings and other uses. Thus, the proposed development is consistent with the LUPAG Map designation.

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.

Access is proposed from the Akoni Pule Highway, a State-owned highway. In a letter dated April 19 2006, the Department of Transportation (DOT) stated several concerns including the number, spacing and design of the proposed accesses to Akoni Pule Highway as well as various traffic-related concerns. Although issues such as traffic are valid and important concerns, in the *Topliss vs. Planning Commission*, the Third Circuit Court concluded that if the proposed development does not result in substantial adverse environmental or ecological effect, or is not inconsistent with the objectives, policies, and guidelines of the Coastal Zone Management Act, the Planning Commission's finding that the development would have significant adverse effects and impact on the existing roadway system in the area of the development is not a sufficient basis for denying the application. Traffic issues can be considered in a SMA permit if traffic affects other criteria listed in the SMA law, such as public access to the sea or the ability to evacuate a coastal area during a natural hazard. While the SMA permit will not include specific conditions about the project's vehicular access to the Akoni Pule Highway, the Planning Department does intend to require this proposed five-lot subdivision to use the existing cul-de-sac access to the north as one of the subdivision requirements, rather than allowing a third access. This would be done during the subdivision process.

In view of the 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: Paul H. Rosendahl, Ph.D., Inc. (PHRI) conducted archaeological inventory surveys in 1991 and 1992. The survey covered 103 acres of coastal land and identified 29 archaeological sites consisting of 87 features. An Archaeological Mitigation Plan prepared in December 2003 included proposed preservation measures for 6 sites, extensive data recovery measures for 10 sites and limited data recovery for 13 sites, and was approved by the Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) in May, 2004. Two of the six sites (Sites 2491 and 16130) recommended for preservation are burials and will be preserved in place. The Burial Treatment Plan was approved by the Hawaii Island Burial Council in February, 2004 and the DLNR-HPD in December, 2004. Access to the burials will be provided by pedestrian access easements. The remaining preservation sites will be preserved in perpetuity by the establishment of preservation easements. The archaeological mitigation plan approved by the DLNR-HPD and the Burial Treatment Plan approved by the Hawaii Island Burial Council and DLNR-HPD will be implemented prior to the commencement of any construction activity on the site.

A botanical study conducted by Char & Associates in 1994 stated that the project site consisted mostly of buffel grass with scattered kiawe trees. A few native species such as pili grass, pau o hiiaka, ilima, alena and uhaloa were also identified on the site. None of the species identified were listed as threatened or endangered, and none were proposed or candidate for such status.

The valuable cultural, historical, and natural resources found in the area: Preservation sites and burials found on the site will be preserved by preservation easements. The approved Archaeological Mitigation Plan and Burial Treatment Plan will be implemented prior to construction.

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 applicant states that 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 applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval of this permit.
2. To mitigate potential interference with viewplanes from the Akoni Pule Highway, structures in the subdivisions shall be limited to a maximum height of twenty-five (25) feet, measured according to Chapter 25, Hawaii County Code, but the high point of the roof shall not exceed a height of thirty (30) feet. The height should be measured from the lower of the natural grade or finished grade. Structures shall be set back a minimum of 100 feet from the certified shoreline, and structures, except entry features and infrastructure improvements, shall not be constructed within a 150-foot setback from the Akoni Pule Highway right-of-way.
3. All project utilities shall be underground.
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. If required, the drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to the receipt of Final Subdivision Approval.
6. 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.
7. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
8. Comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.

9. 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.
10. Individual wastewater systems shall be installed, meeting with the approval of the Department of Health.
11. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
12. The archaeological mitigation plan approved by the State Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) and the Burial Treatment Plan approved by the Hawaii Island Burial Council and the DLNR-HPD, shall be implemented prior to commencement of any construction or land alteration activities on the property.
13. 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.
14. The applicant shall construct two walkable pedestrian access trails. One shall be from the Akoni Pule Highway to the shoreline and may be located on any of the lots on the subject 63.8-acre parcel. The other shall be a lateral shoreline access and extend the width of the subject 63.8-acre parcel. The trails shall be constructed or their construction shall be bonded prior to Final Subdivision Approval, to standards meeting with the approval of the Planning Director.
15. The applicant shall provide a minimum of three (3) public parking spaces in close proximity to the mauka end of a mauka-makai pedestrian trail.
16. The applicant may control public usage of the access in a manner generally consistent with Rule 21 of the Planning Department Rules, or may, in the alternative, submit a public access management plan for review and approval of the Planning Director.
17. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.



18. 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.
19. 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.

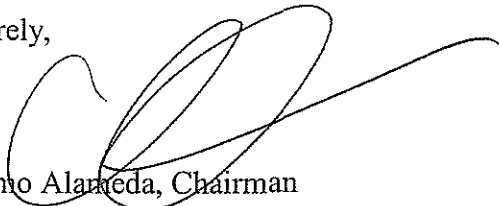
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Mr. Glen Koyama

Page 10

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288, ext no. 205.

Sincerely,



C. Kimio Alameda, Chairman  
Planning Commission

Lbeltcollins01PC

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  
Rodney Haraga, Director/DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Zoning Inspector-Kona  
Subdivision Section  
Mr. Gregory Mooers