

## 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 30, 2008

Steven S. C. Lim, Esq.  
Carlsmith Ball LLP  
121 Waiuanue Avenue  
Hilo, HI 96720

Dear Mr. Lim:

Special Management Area Use Permit Application (SMA 07-000024)  
Request: To Allow a 65-Lot Single Family Residential Subdivision  
Applicant: Kona Heights, LLC  
Tax Map Key: 7-7-8:121

The Planning Commission at its duly held public hearing on June 20, 2008, voted to approve the above-referenced request for a Special Management Area (SMA) Use Permit to allow the development of a 65-lot single family residential subdivision and related improvements. The property is located at the south end of Naniloa Street and adjacent to the White Sands Beach Estates and Keauhou View Estates Subdivisions, Kapalaalaea, 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, with the proposed conditions, will not have any significant adverse environmental or ecological effect. The applicant proposes to develop a 65-lot single-family residential subdivision and related improvements. The anticipated product type is that of clustered single-family homes with smaller scale lots approximately 4,500 square feet in size. These small lots will be created through a Planned Unit Development under the proposed RS-7.5 zoning. All structures will be one

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to two stories in height, and affordable housing requirements will be met with on lands owned by the applicant mauka of the site. Two archaeological sites and buffers will be preserved.

The applicant requests a concurrent State Land Use Boundary Amendment from Agricultural to Urban and a Change of Zone from A-5a to RS-7.5 to allow the subdivision.

The proposed action will not create significant adverse impacts upon nearby and immediately adjacent properties. The project site is approximately 11.054-acres in size and located approximately 11 miles south of the Kona International Airport at Keahole and four miles south of Kailua-Kona. The property is overgrown with vegetation, currently vacant and located outside of the Kahaluu Historic District. The White Sands Beach Estates and Keauhou View Estates are zoned RS-7.5 and located adjacent to the north of the project site. Lands to the west (makai) of the property are zoned A-5a. The Kahului - Keauhou Parkway (Alii Highway) borders the property to the east (mauka). Lands south of the project site are zoned RS-7.5 and RM-3.5.

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. According to the applicant, the development may result in some compromise to views from adjacent developments, but due to the slope of the project site, no significant impacts are anticipated. White Sands Beach Estates and Keauhou View Estates subdivisions' property owners to the north and Alii Heights property owners to the north east, have relatively unobstructed views south across the site and the undeveloped KIC property.

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. County water is available to the project site from an existing 6-inch waterline within Queen Kalama Avenue, approximately 150 feet from the parcel. According to the applicant, the project is

registered with the U.S. Green Building Council as a LEED project and has indicated that LEED design criteria require lower water demands than County requirements. As such, the DWS requests that the applicant submit data and calculations prepared by a registered professional engineer to support the LEED design criteria.

The project will connect to the County wastewater system. 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 to ensure that impacts on coastal resources are minimized.

A survey titled *Archaeological Inventory Survey, TMK: 7-7-08: 121, Land of Kapalaalaea 2, North Kona District, Island of Hawaii* was prepared by Haun and Associates in January, 2006 (Appendix B). The archaeological inventory survey identified 14 sites assessed as significant for their information content. Nine sites were recommended for mitigation through data recovery, and two sites were recommended for preservation. The plans for data recovery will be detailed in a Data Recovery Plan prepared for DLNR-SHPD review and approval. Specific plans for preservation and maintenance of a burial feature will be detailed in a Burial Treatment Plan prepared for DLNR-SHPD and the Hawaii Island Burial Council's review and approval. The project will not impact the preservation sites. A protective buffer (fence) will be established around the sites. A study titled *Cultural Impact Study/Assessment, Laipala Heights, Kapalaalaea Ahupuaa, District of North Kona, Hawaii Island* was prepared by Kaimipono Consulting Services LLC in December, 2006 (Appendix C). The study concluded that "while evidence of ancient or traditional cultural practices still exists on the project lands, there does not appear to be any evidence of any ongoing traditional cultural practices, except perhaps fishing, which, while not directly impacted by the project, may indirectly impact this resource."

Vegetation at the site is characterized by koa haole scrub land. A *Survey of Botanical, Avian and Terrestrial mammalian Species for the proposed Laipala Heights Subdivision, North Kona District, Island of Hawaii* prepared by Rana Productions in 2006 identified 36 plant species of which two were indigenous. No hoary bats were detected during the field survey. The avian survey identified 224 birds of fourteen different non-native species. There were no species of flora or fauna currently listed as endangered, threatened or proposed for listing under either the State or Federal endangered species programs

The property is located in Zone "X", an area outside of the 500-year flood plain. The DPW recommends that a drainage study be prepared to include a flood study to determine whether the property may be inundated by the design discharge from the proposed culverts crossing Kahului to Keauhou Parkway. A condition will be included to require the applicant to comply with Chapter 27, Flood Control for the development of the project site.

According to the applicant, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site or nearby area, nor existence of any known valued cultural, historical or native resources.

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. The property is zoned Agricultural (A-5a). The applicant is requesting a concurrent change of zone from A-5a to RS-7.5 to allow the development of the 65-lot subdivision. Thus, the proposed project is consistent with the LUPAG Map designation and the Zoning Code.

Access to the project site will be from Alii Drive via the extension of the Naniloa Street stub-out at Queen Kalama Avenue. Naniloa Street has a 20 ft. wide pavement within a 50-ft right-of-way. Queen Kalama Avenue has a 20 ft. wide pavement within a 50-ft. right-of-way. Access from Alii Drive is available from Laaloa Avenue which has a 20 ft. wide pavement within a 60-ft right-of-way. No vehicular access easements are provided from the future Kahului to Keauhou Parkway. The project proposes to connect with the future Kamehameha Investment Corporation's development (TMK: 7-8-10: 2) south of the project site, as well as connections to Alii Drive through the currently vacant parcel (TMK 7-7-8:001) makai and adjacent to the project site. Discussions have been initiated with the adjacent makai landowner. The Department of Public Works (DPW) requires roadway connections to adjoining parcels and states that vehicular access to individual lots shall be prohibited from Kahului to Keauhou Parkway. However, a gated vehicular emergency egress to Kahului to Keauhou Parkway may be installed. The DPW further requires improvements at the Queen Kalama Avenue - Alii Drive intersection including any necessary pavement widening, the construction of a dedicated southbound left turn lane on Alii Drive and provision of concrete curb, gutter and sidewalk on one side of the street with appropriate drywells for drainage control from the proposed development to Alii Drive.

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: The applicant has submitted the following studies from which the Planning Commission can determine the valued natural, cultural and historical resources in the project area.

- *A Survey of Botanical, Avian and Terrestrial mammalian Species for the proposed Laipala Heights Subdivision, North Kona District, Island of Hawaii* prepared by Rana Productions in 2006
- *Archaeological Inventory Survey, TMK: 7-7-08: 121, Land of Kapalaalaea 2, North Kona District, Island of Hawaii* prepared by Haun and Associates in January, 2006
- *Cultural Impact Study/Assessment, Laipala Heights, Kapalaalaea Ahupuaa, District of North Kona, Hawaii Island* prepared by Kaimipono Consulting Services LLC in December, 2006

The valuable cultural, historical, and natural resources found in the area: Both the floral/fauna and archaeological studies revealed no endangered species or historical sites on the project site. However, a condition will be included to require the applicant to cease work and notify the DLNR-HPD should any remains be discovered on the site, until given clearance to proceed by the DLNR-HPD. The submittal of a Data Recovery Plan and a Burial Treatment Plan will be required as a condition of approval for the two sites in the project area.

Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices. According to the botanical and archaeological studies submitted by the applicant, the project will not adversely impact resources in the area.

Feasible actions to protect native Hawaiian rights: The applicant has stated that there is no evidence of any traditional or customary Native Hawaiian rights being practiced on the project site, nor existence of any known valued cultural, historical or native resources in the area. Thus, it is believed that the project would have no adverse impact relative to the cultural and historical resources of the area. To the extent to which traditional and customary Native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian 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. The effective date of this Special Management Area Use Permit shall be the effective date of the Change of Zone for this project (REZ 07-000075).
3. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within 180 days from the effective date of this permit.
4. Final Subdivision approval shall be secured within five (5) years from the effective date of this permit.
5. Access shall meet with the approval of the Department of Public Works and conform to Chapter 22 (Streets) of the Hawaii County Code.
6. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
7. 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 in the State of Hawaii.
8. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
9. The project shall connect to the County sewerline.
10. Comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.

11. A Data Recovery Plan for the two sites recommended for preservation (Sites 24842 and 24534) shall be submitted to the DLNR-HPD for review and approval. A landscaped buffer shall be constructed around the sites.
12. A Burial Treatment Plan for Site 24842 shall be submitted for the review and approval of the Planning Director in consultation with the DLNR-HPD and Hawaii Island Burial Council. The proposed mitigation treatment for the burial site shall be approved by the Hawaii Island Burial Council before detailed mitigation plans are finalized. A copy of the approved Burial Treatment Plan shall be submitted to the Planning Director prior to the issuance of any land alteration permits.
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 comply with all applicable County, State and Federal laws, rules, regulations and requirements.
15. 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.

Steven S. C. Lim, Esq.

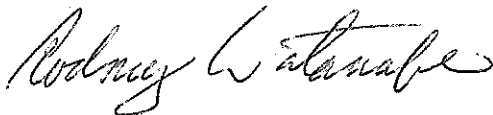
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Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

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.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Rodney Watanabe".

Rodney Watanabe, 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  
DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Zoning Inspector - Kona  
Subdivision Section