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

October 16, 2003

Mr. Earl Matsukawa, AICP
Wilson Okamoto Corporation
1907 S. Beretania St., Suite 400
Honolulu, Hawai'i 96826

Dear Mr. Matsukawa:

SUBJECT: Special Management Area Use Permit Assessment Application (03-49)
Special Management Area Minor Permit No. 144
Shoreline Setback Area Determination of Minor Activity
Declaration of Exemption from Preparation of Environmental Assessment
Applicant: Kamehameha Schools
Owner: Kamehameha Schools
Request: Demolition of the Kona Lagoon Hotel
Tax Map Key: 7-8-013:002

By this letter we are transmitting the referenced SMA Minor Permit No. 144 and relevant determinations of exemption from the definition of "development" under Planning Commission Rule 9 and Chapter 343, Hawaii Revised Statutes (HRS) as itemized below.

1. SMA Minor Permit No. 144 is approved for:
 - a) The demolition of the seven-story Kona Lagoon Hotel, portions of the underground utilities, the timber arched porte cochere, one-story convention center, artificial lagoon, swimming pool, pavements, and other man-made improvements as depicted on the Demolition Plan dated September 5, 2003; and
 - b) Restoration of the topography surrounding the demolition area upon completion of the demolition activities to include backfilling of previously excavated areas with crushed concrete rubble and imported topsoil.

2. Pursuant to Planning Commission Rule 9-4(10) B (viii) relating to the SMA, the use of any land for the purpose of planting and growing of plants is exempt from the definition of "development." Therefore, the planting of unspecified species of ground cover vegetation to serve as means of erosion control in the shoreline setback area on the subject property is exempt from further review under the SMA rules and regulations.
3. Planning Department Rule 11-3(a), relating to the shoreline setback area, defines "activity" as *"any landscaping, excavating, grubbing, grading, filling or stockpiling of earth materials, including sand, coral, coral rubble, rocks, soil, or marine deposits."* The proposed project includes the re-excavation of areas previously excavated for the construction of the existing improvements that are to be demolished. Excavated areas are to be back-filled with crushed concrete from the proposed demolition operations and topsoil imported from off site locations so as to avoid creating depressions where ponding could occur and to avoid creating mounds that could channelize runoff leading to increased erosion. The placement of topsoil in the shoreline setback area will also facilitate the planting of ground cover to further reduce erosion.

Pursuant to Planning Department Rule 11-7(a)(4), *"a minor structure or activity approved in accordance with section 11-8"* may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department. Section 11-8 states: *"A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline."*

Our understanding of representations made in the application and supplemental information submitted at the request of the Planning Department include the following:

- a) Excavation activities in the shoreline setback area shall be limited to the removal of underground utilities and elements of those structures being demolished that are below the natural grade in the shoreline setback area.
- b) Backfilling with crushed concrete and imported topsoil shall be limited to areas in the shoreline setback area having been previously excavated in connection with the construction of those improvements now being removed.
- c) Backfilling shall be limited to restoration of the natural grade surrounding the areas to be demolished.
- d) The groundcover to be planted will be a grassy species appropriate for the shoreline environment.
- e) All public access pathways will be preserved and maintained by the applicant. The shoreline recreational resources of the project site will be inaccessible or restricted only during demolition and backfilling operations.

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Based on the above, the Planning Department has determined that the proposed activities are "minor activities" that will not affect beach processes or artificially fix the shoreline and will not interfere with public access or public views to and along the shoreline, subject to the applicants' compliance with the conditions SMA Minor Permit No. 144.

4. Pursuant to §343-5(a)(3) and (4), HRS, relating to environmental impact assessments, the proposed use requires the preparation of an environmental assessment before final approval of any permits necessary for the project. However, §11-200-8, Hawaii Administrative Rules (HAR), provides for the granting of an exemption by the approving agency from the preparation of an environmental assessment provided that agency obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.

Among the list of exempt classes of action listed in §11-200-8(a), HAR are:

§11-200-8(a)(4) Minor alterations in the conditions of land, water, or vegetation.

§11-200-8(a)(8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS.

An archaeological inventory of the project area was conducted by Paul H. Rosendahl, Ph.D. in 1988.

As recommended by the referenced archaeological inventory survey, a historic preservation mitigation plan for the proper management of the historical resources identified on the subject property was prepared by H. David Tuggle, Ph.D. in 1989.

The Planning Department consulted with the Department of Health (DOH) – Clean Water Branch (CWB), DOH – Office of Environmental Quality Control (OEQC), DLNR – SHPD, U.S. Army Corps of Engineers and Hawaii County Department of Public Works (DPW) regarding the Planning Director's "Declaration of Exemption" from the preparation of an environmental assessment for the subject project. No objections to the declaration were expressed by any of the consulted departments or agencies. By copy of this letter, the Planning Department has notified the affected departments and agencies of their verbal acquiescence in the issuance of the declaration of exemption. No uses, activities, or development, other than those described in the "Applicant's Request" shall be exempt from environmental review under Chapter 343.

The applicant shall prepare an archaeological monitoring plan that includes a site preservation plan to be approved by DLNR – SHPD. The plan and SHPD written approval shall be submitted to the Planning Department prior to any demolition or land altering activities on the subject property.

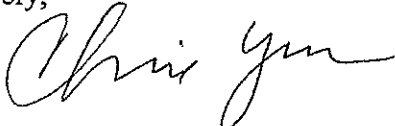
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The applicant is required to secure a National Pollutant Discharge Elimination System (NPDES) Individual Permit from the State of Hawaii Department of Health, Clean Water Branch.

Based on the above, the Planning Department determines that the proposed action will probably have minimal or no significant effect on the environment and hereby exempts the applicant from the preparation of an EA for the proposed project.

Should you have questions, please feel free to contact Larry Brown or Esther Imamura of this department at 961-8288.

Sincerely,



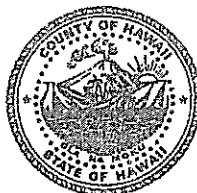
CHRISTOPHER J. YUEN
Planning Director

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Enclosures: SMM No. 144
Department of Public Works October 3, 2003 Memo

xc w/encls: ✓ Long Range Planning - Ms. Susan Gagorik
Planning - Mr. Norman Hayashi
Planning Department - West Hawaii Office
Department of Environmental Management
DLNR - SHPD
DOH
OEQC
Army Corps of Engineers - Honolulu
SMA 321 & SSV 647

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PLANNING DEPARTMENT

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Special Management Area Minor Permit No. 144

Project: Kona Lagoon Hotel Demolition
Applicant: Kamehameha Schools
Land Owner: Kamehameha Schools
Location: Keauhou, North Kona, Island of Hawaii
TMK: (3) 7-8-013:002 **Land Area:** 11.573 acres

Applicant's Request

1. Project Description:

- A. Demolition, by conventional method, of the abandoned seven-story Kona Lagoon Hotel, portions of the underground utilities, the timber arched porte cochere, single-story convention center, artificial lagoon, swimming pool, pavements, and other man-made improvements as depicted on the Demolition Plan dated September 5, 2003.
- B. The backfilling of areas previously excavated to accommodate the improvements to be demolished. Backfill materials include crushed concrete from the above mentioned demolition and imported topsoil necessary to approximate the natural grade surrounding the areas to be demolished.
- C. The planting of unspecified species of ground cover vegetation in the shoreline setback area to serve as a means of erosion control.

2. Purpose of Project:

The existing hotel structure and accessory improvements have been abandoned for many years and have deteriorated to such a degree that they present a significant environmental, health, and safety hazard to the surrounding community and marine resources. It is the applicant's intent to return the site to a condition similar to that prior to construction of the hotel and to restore the natural topography of the site.

3. Project Valuation: \$120,000.00 (exclusive of demolition costs)

4. Determination:

Pursuant to Planning Commission Rule 9-4 B (vii), the *"demolition or removal of structures, except those on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan"* is exempt from the definition of "development." In that the subject property, on which the proposed demolition activities are to occur, is located in the Kahalu'u Historic District, a SMA Minor Permit is required.

Chapter 205A-22, HRS, and Planning Commission Rule 9-4 A (i) defines the *"placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste"* in the SMA as "development." The placement of topsoil in the SMA requires the issuance of a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** The subject property is designated Urban by the State Land Use Commission.
2. **General Plan:** The Hawaii County General Plan Land Use Patter Allocation Guide (LUPAG) Map designates the project site for:
 - a) Open, which allows for parks and historic sites;
 - b) Resort, which allows for uses such as hotels, condominium-hotels and supporting services: and
 - c) Medium Density, which allows for village and neighborhood commercial and residential and related functions (3-story commercial; residential – up to 35 units per acre).

The project site is located in the Kahalu'u Historic District, which is listed in the Historic Sites element of the General Plan. The Kahalu'u Historic District is also listed on the National Register of Historic Sites.

3. **County Zoning:** The subject property is zoned Resort-Hotel 9V-.75) by the County.
4. **Special Management Area:** The subject property is situated in the SMA.
5. **Flood Zone:** The Flood Insurance Rate Map (FIRM) designation for the project site is "AE" and "VE", which indicates that that the property is subject to tsunami or coastal flood hazards.
6. **Chapter 343:** The subject property is within the Kahalu'u Historic District. However, the proposed action is determined to be exempt from the preparation of an EA as it will have minimal or no significant impact on the environment.

Compliance with Objectives and Policies of Chapter 205A, Hawai'i Revised Statutes (HRS), Regarding the Special Management Area

The project site is a shoreline property and safety concerns necessitate that short term public access to the recreational resources along the shoreline will be restricted during the demolition and backfilling operations. As specified in the conditions of approval for this permit, the applicant shall preserve and maintain all existing shoreline public access pathways.

Demolition and backfilling operations are expected to be completed within approximately one year from the approval of this SMA Minor Permit and may result in some storm water discharges into Class AA Marine waters. Potential environmental impacts that may result from these activities shall be mitigated by the requirements of the National Pollution Discharge Elimination System (NPDES) Individual Permit, as required by the Department of Health. Additional mitigative measures required as a condition of this SMA Minor Permit shall also provide protection of the shoreline setback area and near shore waters.

The proposed demolition and ground alteration activities may pose considerable risk of damage or destruction of several historic sites in proximity of the project site. As required by a condition of this permit, the applicant shall, prior to the commencement of any demolition or other land altering activities, prepare and submit to the Planning Department an archaeological monitoring plan that includes a site preservation plan to be approved the Department of Land and Natural Resources – State Historic Sites Division (DLNR – SHPD).

All proposed grading and backfilling activities are subject to the requirements of Chapter 27 – Flood Control, of the Hawaii County Code and shall require that the applicant secure a grading permit from the Department of Public Works.

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

- ☒ 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 effect and the elimination of planning options.
- ☒ The proposed development is consistent with the Hawai'i County General Plan and the Zoning Code.

- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, Hawai'i Revised Statutes to:
 - ☒ Provide coastal recreational opportunities accessible to the public.
 - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
 - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
 - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
 - ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.
 - ☒ Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.
 - ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
 - ☒ Stimulate public awareness, education, and participation in coastal management.
 - ☒ Protect beaches for public use and recreation.
 - ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, Hawai'i Revised Statutes relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
 - ☒ Marine Resources

The proposed development conforms to the requirements of Hawai'i Revised Statutes Chapter 343, Environmental Impact Statements.

Findings

Our understanding of representations made in the application and supplemental information submitted at the request of the Planning Department include the following:

- a) Excavation activities in the shoreline setback area shall be limited to the removal of underground utilities and elements of those structures being demolished that are below the natural grade in the shoreline setback area.
- b) Backfilling with crushed concrete and imported topsoil shall be limited to areas in the shoreline setback area having been previously excavated in connection with the construction of those improvements now being removed.
- c) Backfilling shall be limited to restoration of the natural grade surrounding the areas to be demolished.
- d) The groundcover to be planted will be a grassy species appropriate for the shoreline environment.
- e) The existing public access pathways to and along the shoreline, as depicted in a public beach access map and photos transmitted by email to the Planning Department on October 15, 2003, will be preserved and maintained by the applicant. In the interest of public safety, the shoreline recreational resources of the project site will be inaccessible or restricted during demolition and backfilling operations.

Based on the above, the Planning Department has determined that the proposed activities are "minor activities" that will not affect beach processes or artificially fix the shoreline. The Planning Department has further determined that the proposed activities will not interfere with public access or public views to and along the shoreline on a long term basis.

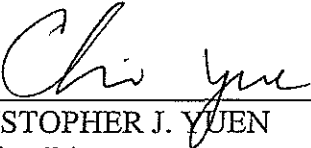
Conditions of Approval

- 1. The applicant(s), its successors or assigns shall be responsible for complying with all stated conditions of approval.
- 2. All improvements shall be completed within one (1) year of the permit's date of approval. This includes the planting of ground cover vegetation and the removal of all construction barriers inhibiting public access to and along the shoreline.
- 3. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls, will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigative measures are taken for the discovery, with written guidance from the State Historic Preservation Division of the Department of Land and Natural Resources.

4. Applicant shall prepare an archaeological monitoring plan that includes a site preservation plan to be approved by the DLNR – SHPD. A copy of the DLNR – SHPD approved plan and letter of approval shall be submitted to the Planning Director prior to the approval of permits for any demolition or other land altering activities on the project site.
5. All debris resulting from demolition activities shall be removed from the shoreline setback area and near shore waters on a daily basis. As required by the Department of Health, the applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) Permit and comply with all conditions and regulations of said permit.
6. Existing shoreline access pathway on the subject property shall be retained and maintained by the applicant as necessary to afford public access to and along the shoreline. The public access pathways shall remain open to the public except during periods of actual demolition and backfilling operations where closure of the affected portions of the pathway is necessary to ensure the public safety.
7. Excavation activities in the shoreline setback area shall be limited to the removal of existing underground utilities and elements of the structures being demolished.
8. Backfilling shall be limited to excavated areas only. No backfilling of natural depressions in the shoreline setback area is permitted.
9. Backfilling in the shoreline setback area shall not exceed the height of the natural grade immediately surrounding the area to be back-filled. Backfilling behind the “existing breakwall to remain,” as identified on the “Demolition Plan” dated September 5, 2003, shall not exceed the height of the breakwall.
10. Ground cover vegetation to be planted in the shoreline setback area shall be of a species native to the island of Hawai‘i and shall neither exceed three (3) feet in height nor inhibit public access to and along the shoreline.
11. A (demolition) building permit shall be secured from the Department of Public Works – Building Division for each structure to be demolished.
12. Flood Zone “AE and VE” affects the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 16, 1988. All proposed activities shall comply with and meet the requirements of the DPW.
13. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
14. The applicant(s), its successors or assigns shall comply with all other laws, rules, and regulations of the affected agencies.

15. An 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 petitioner, successors or assigns, and that are not the result of their fault or negligence; (b) the granting of the time extension would not be contrary to the Hawai'i County 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; and (d) the time extension granted shall be for a period not to exceed the period originally granted for performance. Further, 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.

APPROVED:



CHRISTOPHER J. YUEN
Planning Director

10/16/03

Date