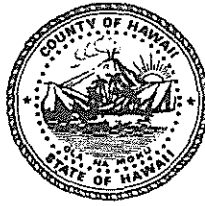


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

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

May 5, 2009

Mr. Stephen J. Herbert  
73-4609 Kukui Street  
Kailua-Kona, HI 96740

Dear Mr. Herbert:

**Subject: Special Management Area Use Permit Assessment Application  
(SAA-09-000423)  
Special Management Area Minor Permit No. 09-000109**  
**Applicant: Stephen J. Herbert**  
**Land Owner: Kamehameha Investment Corporation**  
**Request: Demolish a Fire Damaged Plant Center Building**  
**Tax Map Key: (3) 7-8-010:035, Kahalu'u- Keauhou 1<sup>st</sup>, North Kona, Hawai'i**

We have reviewed the subject Special Management Area Use Permit Assessment Application (SMAA 09-423), which you submitted on March 20, 2009. The applicant proposes to demolish a fire damaged building on the subject property.

The property consists of 30.331 acres. The property is zoned Resort-Hotel (V-4), Multiple Family Residential (RM-3), and Open by the County and is designated Urban by the State Land Use Commission. In addition, the entire parcel is located within the Special Management Area (SMA).

According to Hawaii Revised Statutes (HRS) Chapter 205-A-22 and Planning Commission Rule 9-4(10)B(vii), "development" does not include *demolition or removal of any structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan*. The subject property is located within the Kahalu'u Historic District. Therefore, the demolition of the plant center building is considered "development" and requires either a Special Management Area Minor Permit or a Special Management Area (Major) Use Permit.

Mr. Stephen J. Herbert

Page 2

May 5, 2009

For this reason and pursuant to Planning Commission Rule No. 9-10(E), Special Management Area Minor Permit No. 09-000109 is hereby issued to allow for the proposed demolition of the fire damaged plant center building on the subject property. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

If you have questions or require further information, please feel free to contact Bethany Morrison of this office at 961-8288, extension 252.

Sincerely,



BJ LEITHEAD TODD

Planning Director

BJM:cs

P:\wpwin60\CZM\SMM\2009\SMM 09-109L Herbert.doc

Enclosure: SMM No. 09-000109  
Memorandum from Department of Public Works

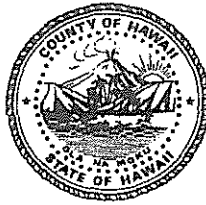
cc w/encls: Long Range Planning Division

Planning Department- Kona Office

Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378

cc ltr only: Mr. Abbey S. Mayer, Director  
State of Hawaii, Office of Planning  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, HI 96804

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

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

### Special Management Area Minor Permit No. 09-000109

**Project:** Demolish a Fire Damaged Plant Center Building  
**Applicant:** Stephen J. Herbert  
**Land Owner:** Kamehameha Investment Corporation  
**Location:** Kahalu'u-Keauhou 1st, North Kona, Hawai'i  
**TMK:** (3) 7-8-010:035 **Land Area:** 30.331 acres

#### Applicant's Request

- 1. Project Description:** The applicant proposes to demolish a structure that was damaged by fire and has since been abandoned. The building was a plant sales structure during the operation of the Kona Gardens visitor center that was created in the 1980's. Removal of the fire damaged building will improve the site and eliminate the potential hazards of its existence. No new construction is proposed.
- 2. Purpose of Project:** The purpose of the project is to eliminate the hazard of an abandoned fire damaged building. Kamehameha Investment Corporation has embarked on an ambitious program to restore the nearby Papakoholua Heiau and remove all non native plants in the parcel. There are several buildings on the site that are no longer in use. They include an Amphitheater, Audio-Visual Center, Longhouse and Visitor's Center. All of these buildings will be removed in the future.
- 3. Project Valuation:** \$24,000.00
- 4. Determination:** According to Hawai'i Revised Statutes (HRS) Chapter 205-A-22 and Planning Commission Rule 9-4(10)B(vii), "development" does not include *demolition or removal of any structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan.* The subject property is located within the Kahalu'u Historic District. Therefore, the demolition of the plant center building is considered "development" and requires a Special Management Area 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 Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property for Resort Node use.
3. **County Zoning:** The property is zoned Resort-Hotel (V-4), Multiple Family Residential (RM-3), and Open.
4. **Special Management Area:** The subject property is located in the SMA.
5. **Flood Zone:** X

<p style="text-align: center;"><b>Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</b></p>
---

The project area does not have frontage along the coastline and there are no public access trails on or adjacent to the subject parcel. Therefore, the proposed demolition will not affect the recreational resources available to the public.

The primary concern of the landowner is to avoid any movement of motorized vehicles or equipment in the heiau area. The nearest edge of the heiau is 250 feet from the building. The work area will be cordoned off from any access to the heiau.

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.

The proposed development is consistent with the following objectives and 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, HRS, 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 tsunامي, 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, HRS, 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 Chapter 343, HRS, regarding Environmental Impact Statements.

<b>Findings</b>
-----------------

As discussed above, 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 proposed development is consistent with the Hawai'i County General Plan and Zoning Code.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated project cost of approximately \$24,000 is not in excess of \$125,000.

The enclosed Department of Public Works, Engineering Division memorandum dated April 30, 2009, states the following:

*"We have reviewed the subject application and our comments are as follows:*

*The subject property is not within any Special Flood Hazard Area on the Flood Insurance Rate Map.*

*Buildings shall conform to all requirements of the code and statutes pertaining to building construction. A building permit will be required for the demolition of the structure.*

*Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530."*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 09-000109** is hereby approved for the demolition of a fire damaged plant center building, subject to the applicant's compliance with the conditions of approval as specified below.

<b>Conditions of Approval</b>
-------------------------------

The Planning Director has approved **SMA Minor Permit No. 09-000109** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. Prior to any Planning Department approval of a building permit for the demolition, the applicant shall provide the Planning Director with a written approval of the proposed demolition from the State Historic Preservation Division of the Department of Land and Natural Resources.
4. A building permit for the demolition of each structure shall be secured from the Department of Public Works, Building Division within (1) year from the date of this permit
5. Demolition of the fire damaged plant center building approved by this permit shall be completed within two (2) years from the date of this permit.
6. All building materials from the subject building shall be collected and disposed of off-site at appropriate locations.
7. This permit does not include the construction or demolition of any other structures or other uses on the subject property. Another SMA Use Permit Assessment will be required for any uses or activities beyond the scope of this project.
8. The applicant shall erect a construction barrier meeting with the approval of the Planning Department around the entire demolition site. The construction barrier

shall be erected prior to the commencement of any construction, clearing, grading or other land altering activities and shall remain in place until the Building Division has granted Final Approval for all Building Permits issued in connection with the subject project.

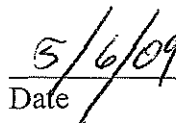
9. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an 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.
10. An extension of time for the performance of the conditions contained herein 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 original reasons for the granting of the permit; and
  - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
11. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

APPROVED:



B. LEITHEAD TODD

Planning Director

  
Date

PLANNING DEPARTMENT  
COUNTY OF HAWAII


2009 MAY -4 PM 1:05

DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO, HAWAII

DATE: April 30, 2009

## Memorandum

TO : B.J. Lelthead-Todd, Acting Deputy Planning Director  
Planning Department

FROM : Galen M. Kuba, Division Chief   
Engineering Division

SUBJECT : SMA Use Permit Assessment Application (SAA 09-000423)  
Applicant: Stephen J. Herbert  
Location: Kahaluu - Keauhou 1<sup>st</sup>, North Kona, Hawaii  
TMK: 3/ 7-8-010:035

We reviewed the subject application and our comments are as follows:

The subject property is not within any Special Flood Hazard Area on the Flood Insurance Rate Map.

Buildings shall conform to all requirements of code and statutes pertaining to building construction. A building permit will be required for the demolition of the structure.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.

KE

copy: ENG-HILO  
PLNG-KONA

052493