

## County of Hawai'i

### PLANNING COMMISSION

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December 8, 2008

Mr. Martin Nakasone  
M&E Pacific, Inc.  
841 Bishop Street, Suite 1900  
Honolulu, HI 96813

Dear Mr. Nakasone:

Special Management Area Use Permit Application (**SMA 08-000028**)  
Use Permit Application (**USE 08-000013**)  
Shoreline Setback Variance Application (**SSV 08-000003**)  
Request: Small Boat Harbor Facility  
Applicant: Edward R. Underwood (Administrator, DLNR-DBOR)  
Tax Map Key: 6-1-3:portion 26

The Planning Commission at its duly held public hearing on November 24, 2008, voted to approve the above-referenced requests for a (1) Special Management Area Use Permit to allow the Kawaihae Small Boat Harbor (South) improvements; (2) Use Permit to allow the small boat harbor improvements within the Multiple-Family Residential – 1,500 square feet (RM-1.5) and Open (O) districts; and (3) Shoreline Setback Variance to allow portions of the small boat harbor improvements within the 40-foot shoreline setback area. The property is located on the south side of the existing Kawaihae Boat Harbor, Kawaihae, South Kohala, Hawaii.

Approval of these requests are based on the following:

#### **SPECIAL MANAGEMENT AREA (SMA) USE PERMIT**

The applicant is requesting a Special Management Area Use Permit to allow construction of the first phase of a small boat harbor called the Kawaihae Small Boat Harbor (South). The first phase will include the following improvements:

- Portion of a 45-foot wide, concrete three-lane boat launch ramp with two loading docks, one that will be ADA accessible. (Note: A portion of the improvements is seaward of the SMA.)

*Hawai'i County is an Equal Opportunity Provider and Employer*

- Main floating dock with accessible pedestrian ramp and gangway. (Note: A portion of the improvements is seaward of the SMA)
- Grading and drainage for vehicle and boat trailer parking areas.
- Grading for the realignment of the vehicle access through the project site.
- Boat wash down area.
- Comfort station with an individual wastewater system, outdoor shower, water and electrical service installation.
- Other miscellaneous fencing, signage, site lighting, grading and drainage as required.

The Kawaihae Deep-draft Harbor (DDH) was constructed in 1959 by the U.S. Army Corps of Engineers (USACE) without a light-draft component. In 1969, the USACE planned "Project Tugboat" to widen the relocated harbor's entrance channel and its basin, extend the existing breakwater, and construct the small boat harbor adjacent to the deep-draft harbor for light-draft vessels. The project was completed in December of 1970. In 1984, the State Department of Transportation – Harbors Division (DOT-Harbors), with support of the USACE, developed a general design of further development to Kawaihae SBH (South). An Environmental Assessment was prepared for the small boat harbor, specifically for the extension of the west breakwater with a revetted mole, and the construction of an east revetted mole with a connecting breakwater for 90 commercial small crafts. The Final EA was approved in December of 1994, which was issued a Finding of No Significant Impact (FONSI) to the harbor site. Construction of the west breakwater extension and east revetted mole with connecting breakwater was completed in July of 1998. The U.S. Army Engineer District, on behalf of DLNR, contracted M&E Pacific, Inc. to prepare a Master Plan for the Kawaihae SBH (South), which was finalized and accepted in December of 2003.

Presently, there are approximately 23 light-draft vessel users that utilize the Kawaihae Small Boat Harbor - North located at the northwestern end of the Kawaihae Deep-draft Harbor (DDH) near the harbor mouth. This small basin is insufficient for complete operations of light-draft vessels. With the recent and projected increase in use of the DDH, there is a need to terminate the existing small boat operations at the DDH basin and development a separate small boat harbor dedicated for service to light-draft vessel movements and activities.

The proposed harbor improvements will separate the deep-draft harbor operations from the small boat harbor operations by relocating the small boat harbor from the existing north harbor to the south small boat harbor. This will greatly improve safety issues by separating the light-draft vessels from the larger commercial vessel activities. Currently, Kawaihae Harbor commercial traffic consists mainly of barges, but the harbor will soon have to accommodate significant amounts of passenger traffic with the proposed inter-island Super Ferry scheduled to begin service to the Big Island in 2010.

The applicant is proposing to improve and develop a portion of the existing Kawaihae SBH (South) to service light-draft watercraft operations in the tributary area. At this time, mooring blocks with buoys will be provided along the length of the floating dock to provide berthing stalls for approximately 30 light-draft vessels, which will allow the light-draft vessels currently utilizing Kawaihae SBH (North) to be relocated to Kawaihae SBH (South). The mooring blocks will eventually be used in conjunction with permanent finger piers, which will be installed in a future phase of the project.

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. In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action. 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 elimination of planning options.

A "substantial adverse effect" is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. In reviewing the proposed development against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1 through 10), it has been determined that the proposed development of the first phase of the Kawaihae Small Boat Harbor (South) and related improvements in this area will not have significant adverse environmental or ecological effects to the Special Management Area, except as such adverse effect(s) is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Conditions of approval will be added to minimize possible adverse effects described below.

The project site is 5.81-acre portion of a 50.858-acre property and situated along the shoreline. The project site has a small storage area and dock operated by YMCA, which will be relocated. Surrounding properties are similarly zoned Open, MG-1a and RM-1.5 and consist mainly of the Kawaihae Harbor Facilities. The Pu'ukohola Heiau National Historic Park and Spencer Beach Park are located to the east of the subject property.

The Department of Land and Natural Resources-State Historic Preservation Division believes that increased turbidity may affect the submerged heiau section(s) of the National Historic Site property located in close proximity and they recommend that an

archaeological inventory survey be conducted of the submerged heiau prior to beginning those components of the project that will result in increased silt deposition. A condition of approval will be added requiring the applicant to submit an archaeological inventory survey of the submerged heiau section(s) to DLNR-SHPD, if required, prior to beginning the project and that the applicant comply with any mitigation measures required by DLNR-SHPD to protect the submerged heiau.

The applicant is proposing to construct an accessible comfort station. The applicant has proposed to dispose of the wastewater via an individual wastewater system (IWS) comprised of a septic tank, distribution system, and absorption bed (leachfield). The Department of Land and Natural Resources-State Historic Preservation Division and Division of Aquatic Resources expressed concerns regarding potential negative impacts to the water quality within the small boat harbor as well as adjacent waters, including the heiau, public beach and surfing beach, due to possible contaminants from the septic system and leach field, and from various chemicals, soaps, and bleach from the boat wash down area entering into the ocean through the porous sandy soil. To minimize these potential impacts, a condition of approval will be added requiring the applicant to use an aerobic septic treatment unit for the comfort station. Additionally, a condition of approval will be added requiring the applicant to drain the wash water from the boat wash down area into the kiawe vegetated area away from the shore.

The U.S. Fish and Wildlife (USFWS) and the Department of Business, Economic Development & Tourism (DBEDT) expressed concerns regarding the potential of site lighting disorienting endangered, threatened, and indigenous birds such as the Newell's shearwater and the Hawaiian Petrel, which may cause them to land in an area where they are vulnerable to vehicle collisions and non-native predators. Additionally, the USFWS is concerned that the migrating birds may collide with the light poles while in flight. To minimize the potential effect upon these birds, the applicant is proposing that all lighting associated with the proposed harbor improvements will be designed to be shielded downward so that the bulb is not visible at bulb height from the side. The applicant is also proposing to mount the lights on the shortest poles possible, and that the poles not extend above the height of surrounding vegetation of approximately 20 to 25 feet. Lastly, the applicant is proposing to specify that bulbs with the lowest wattage possible be used with the lighting elements. These proposals by the applicant will be added as a condition of approval to minimize possible negative impacts to these protected birds.

Mayor Harry Kim provided input during the Environmental Assessment process and requested that the applicant design and construct these facilities with mitigation measures in mind to prevent future damage. Mayor Kim also requested that the applicant be aware that the area of the project is popular for local shore fisherman and that small boat harbors serve as a recreational place for children. Lastly, he was concerned that landscaping was not identified in the process and encouraged the applicant to look at

planting coconut trees and other foliage to add to the use and beauty of the area, as well as mitigate problems of wind or runoff. In response to the Mayor's comments, the applicant verified that the boating facilities would be designed with considerations of the hazards experienced at Kawaihae Harbor, as well as the wind hazards. The applicant verified that the SBH will continue to be used by local shore fisherman and that personal safety features will be incorporated into the design where feasible to protect children. Lastly, the applicant responded that landscaping was not part of the first phase other than erosion control because of limited funding, but stated that landscaping would be completed during a future phase. Existing trees and vegetation will be kept in place, as feasible with the design.

A concern was expressed by the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) that they believe the view will be negatively impacted from the National Historical Site to the south and strongly recommend that plantings be set to visually offset any placement of a fence on the side of the Pu'ukohola Heiau National Historical Site. Based on these comments, a condition of approval will be added requiring the applicant to retain all existing coconut trees or replace them with shade-type trees in the general area and to visually offset any fencing along the southeastern boundary of the property with plantings to minimize any negative visual impacts from Pu'ukohola Heiau National Historic Park and Spencer Beach Park.

With these added conditions in place, the proposed development will not create significant adverse impacts upon nearby and/or adjacent properties, nearshore waters, or upon endangered, threatened, and/or indigenous birds in the area.

The property is located within an area adequately served with essential services and facilities such as transportation systems, water, wastewater disposal and other utilities. Access to the project site is from Kawaihae-Mahukona Road, which is a state-owned roadway, through a secured entry gate at the Port of Kawaihae. Due to a Federal Department of Homeland Security requirement initiated in 2004, all visitors to the harbor must either be trained in Maritime Security (MARSEC) clearance or properly escorted to the harbor site. In addition to the MARSEC requirement, DOT-Harbors will require all visitors who wish to access the Kawaihae SBH (South) unescorted to obtain a Transportation Worker Identification Credential (TWIC), effective April 15, 2009. TWICs are tamper-resistant biometric credentials, and all vessel owners will be required to obtain this additional card to moor their vessels at the Kawaihae SBH (South). There is an existing unpaved white coral access road, leading directly to the project site. This road is approximately 20 feet in width. A paved access road will be provided under a future phase.

County water is available to the site from an existing 12-inch waterline within Akoni Pule Highway. The project will be served through an existing 2-inch meter.

Wastewater from the comfort station will be disposed of via an aerobic septic treatment unit as discussed previously. Electrical will be provided only for site lighting and telephone services will not be provided to the project site until a future phase. Police, Fire and Emergency services are provided from Waimea.

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.

The proposed development is consistent with the County General Plan and Zoning Code and other applicable ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Open along the shoreline, and Industrial and Medium Density Urban inland on the subject property.

The proposed development will complement the following goals, policies and standards of the Economic, Transportation and Recreation Elements of the General Plan:

#### Economic Element

- Economic development and improvement shall be in balance with the physical, social, and cultural environments of the island of Hawaii.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

#### Transportation

- Encourage the development, maintenance, and enhancement of Hilo and Kawaihae Harbors as detailed within the State's Hawaii Commercial Harbors 2020 Master Plan.
- Continue to support the Department of Land and Natural Resources in its plans to develop a small boat harbor at Kawaihae.

Recreation

- Public access to the shoreline shall be provided in accordance with an adopted program of the County of Hawaii.
- Improve existing public facilities for optimum usage.
- Recreational facilities shall reflect the natural, historic, and cultural character of the area.

The proposed development is part of the Kawaihae Small Boat Harbor (South) improvements. It will provide stalls for approximately 30 light-draft vessels along with other amenities such as a comfort station, boat wash down area, and parking area for boat trailers and vehicles. The full project build-out will provide a main floating dock along the existing revetted coastline with finger-piers, a concrete three-lane boat launch ramp, loading docks, accessible boat trailer parking in near proximity to the boat launch ramp, accessible comfort stations, buildings for a Boat Club, restaurants and administration space, ice-fish storage and fuel docks, and approximately 318 parking spaces to support future growth and development in the Kawaihae Small Boat Harbor (South). Some of these improvements are seaward of the certified shoreline, thus, are not in the SMA.

The South Kohala Community Development Plan is currently before the Hawaii County Council for adoption. The South Kohala CDP Kawaihae Area Conceptual Plan identifies and supports the Kawaihae Small Boat Harbor South proposed improvements. The proposed request is consistent with the following land use goal of the Kawaihae Community in the South Kohala Community Development Plan:

Kawaihae Policy 1: The County and State Governments shall work closely with the Kawaihae Community to create a balance of recreational, commercial, and industrial uses around the harbor area while preserving the cultural and historic importance of the area.

This policy is achieved by several strategies listed within the Plan. The proposed request is consistent with the following strategies listed in the Plan:

Strategy 1.4: Expand commercial activities around the harbor area.

Strategy 1.5: Expand recreational activities around the harbor area and encourage canoe club activities.

The subject property is zoned Open along the shoreline, and General Industrial (MG-1a) and Multiple-Family Residential (RM-1.5) inland on the subject property. Yacht harbors and boating facilities are permitted uses within the General Industrial zoned district. A Use Permit is required to allow the small boat harbor improvements within the Multiple-Family Residential – 1,500 square feet (RM-1.5) and Open (O)

districts, which has been submitted along with this SMA permit and a Shoreline Setback Variance application for improvements proposed 40-foot shoreline setback area.

Therefore, based on the above, the proposed development is consistent with the County General Plan, the South Kohala Community Development Plan and with County zoning.

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. 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. In reviewing the proposed development, it has been determined that it is consistent with the objectives and policies listed under Chapter 205A, HRS, which includes protecting and preserving recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, beach protection, and marine resources.

The proposed development will not have an adverse impact to the recreational resources to the shoreline and coastal ecosystems. There are identified recreational resources along this area of the coast in Kawaihae including surfing, snorkeling, scuba diving, spearfishing, shore fishing, boating, kayaking, canoeing and other similar types of activities. There are several identified public access areas to the shoreline near the subject property. The project will not restrict access to coastal recreational resources along the shoreline as a condition of approval will added to require the applicant to submit a shoreline access plan to allow for public access to and along the shoreline area of the property.

The proposed development will not substantially interfere with or detract from the line of sight toward the sea from Kawaihae-Mahukona Road or Queen Kaahumanu Highway, which are the nearest state highways.

The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist. In view of the Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian rights, such as 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 following reports were submitted with the application:

- An Environmental Impact Statement (EIS) prepared in 1985 for the full harbor development.
- An Environmental Assessment prepared in 1994 for the construction of the breakwaters.
- An Environmental Assessment submitted along with this application for the first phase of the Kawaihae Small Boat Harbor (South) improvements.

The valuable cultural, historical, and natural resources found in the area: The project site is 5.81-acre portion of a 50.858-acre property. There are no historical or archaeological sites located within the project area. However, the Pu'ukohola Heiau National Historic Park (Site Number 10-05-4139, TMK: 6-2-002: 009, 010, and 016) is located in close proximity of the project site. In a letter dated August 29, 2008, the Department of Land and Natural Resources-State Historic Preservation Division stated that they believe that no historic properties will be affected by the improvements within the project. DLNR-SHPD states that there are still issues that need mitigation, which include the increased turbidity that may affect the submerged heiau of the National Historic Site property nearby, the depth of construction activities, the proposed waste system, and landscaping. Conditions of approval will be added to address these additional concerns expressed by the Department of Land and Natural Resources-State Historic Preservation Division.

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. Additionally, there are no rare, endangered, or threatened species that use the project area as a critical habitat. Conditions of approval have been added to protect endangered, threatened, and indigenous birds such as the Newell's shearwater and the Hawaiian Petrel.

Feasible actions to protect native Hawaiian rights: To the extent that traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights. The proposed project will not restrict the use of natural resources along the shoreline. A condition of approval has been added to protect any unidentified cultural, historical, and natural resource in the event any are encountered during construction.

Based on the above findings, it is determined that the proposed development and related improvements will not have 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. Prior to granting water service for the proposed project, the applicant shall remit the prevailing facilities charge to the Department of Water Supply within one hundred and eight (180) days of the effective date of this permit.
3. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify, if applicable, all existing and proposed structures, fire protection measures, driveway access and parking stalls, and other improvements associated with the proposed use. The applicant shall retain all existing coconut trees or replace them with shade-type trees in the general area. Additionally, the applicant shall visually offset any fencing along the southeastern boundary of the property with plantings to minimize any negative visual impacts from Pu'ukohola Heiau National Historic Park and Spencer Beach Park.
4. The applicant shall submit a shoreline access plan meeting with the approval of the Planning Director prior to submittal of Plan Approval. The shoreline access plan shall provide for public access to and along the shoreline and provide public access signage.
5. The applicant shall use an aerobic septic treatment unit for the comfort station. This system shall be included in plans submitted for Plan Approval.
6. The applicant shall drain the wash water from the boat wash down area into the kiawe vegetated area away from the shore, as represented by the applicant.
7. The applicant shall comply with Chapter 27 - Flood Control, of the Hawaii County Code.
8. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. 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. A Solid Waste Management Plan shall be submitted for review and approval to the Department of Environmental Management, prior to submittal of Plan Approval.
11. The applicant shall incorporate the U.S. Fish and Wildlife Service's Recommended Standard Best Management Practices into the project to minimize the potential for project-related impacts to fish and wildlife resources.
12. The applicant shall design all lighting associated with the proposed harbor improvements to be shielded downward. The applicant shall mount the lights on the shortest poles possible, and that the poles not extend above the height of surrounding vegetation. The applicant shall utilize bulbs with the lowest wattage possible to be used with the lighting elements.
13. If required by DLNR-SHPD, the applicant shall submit an archaeological inventory survey of the submerged heiau section(s) of the National Historic Site property nearby to the Department of Land and Natural Resources-State Historic Preservation Division prior to the start of any construction activity for the project. The applicant shall comply with any mitigation measures required by DLNR-SHPD to protect the submerged heiau section(s).
14. 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.
15. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
16. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of this permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

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

#### **SHORELINE SETBACK VARIANCE**

The applicant is requesting a Shoreline Setback Variance to allow construction of the first phase of a small boat harbor called the Kawaihae Small Boat Harbor (South). The first phase will include constructing a portion of the boat launch-ramp, the west side ADA ramp, and a portion of the east gangway (gangway 2) within the 40-foot shoreline setback area.

The first phase of the project will provide stalls for approximately 30 light-draft vessels along with other amenities such as a comfort station, boat wash down area, and parking area for boat trailers and vehicles. The full project build-out will provide a main floating dock along the existing revetted coastline with finger-piers, a concrete three-lane boat launch ramp, loading docks, accessible boat trailer parking in near proximity to the boat launch ramp, accessible comfort stations, buildings for a Boat Club, retail shops, restaurants and administration space, ice-fish storage and fuel docks, and approximately 318 parking spaces to support future growth and development in the Kawaihae Small Boat Harbor (South). Some of these improvements are seaward of the certified shoreline, thus, are not in the SMA or the shoreline setback area.

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves, which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks.

The Legislature, however, also recognized that certain activities and improvements may be required or constructed within the shoreline setback area for protection of certain shoreline properties. In recognizing this need, the Legislature authorized the respective authorities within the various counties, in this case the Planning Commission, to grant variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205A-46(b) of the Hawaii Revised Statutes, and Section 8-10(b) of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations.

The proposed request to allow portions of the small boat harbor improvements within the forty-foot (40-foot) shoreline setback area would meet the Shoreline-dependant Facility Standard of Rule 8, Section 8-10(b)(1). In reviewing the request against the criteria to allow a variance, the Planning Director has determined that the request for a Shoreline Setback Variance to allow portions of the small boat harbor improvements within the shoreline setback does meet the criteria set forth in Rule 8, Section 8-10 (b)(1) (Shoreline-dependant Facility Standard).

Section 8-10(b) states, "A variance may also be granted upon a finding that, based upon the record, the proposed structure or activity meets one of the following standards of this subsection:

- (1) Shoreline-dependant Facility Standard.

A variance may be granted for an activity or structure that is necessary for or ancillary to a shoreline-dependent facility or improvement, including drainage facilities and boating, maritime or ocean sports recreational facilities; provided that the proposal is the practicable alternative which best conforms to the purpose of this rule.

Additionally, Section 8-10(c) states "No variance shall be granted unless appropriate conditions are imposed as applicable:

- (1) To comply with Chapters 10 and 27 of the Hawaii County Code relating to Erosion and Sedimentation Control and Flood Control, respectively;
- (2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;
- (3) To minimize risk of adverse impacts on beach processes;
- (4) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (5) To minimize adverse impacts on public views to, from, and along the shoreline.

Conditions of approval have been added to address the areas of concern listed above that are applicable. The applicant will be required to comply with Chapter 10 (Erosion and Sediment Control) for earthwork and grading conducted on-site, and the applicant will be required to comply with Chapter 27 (Flood Control) for construction within the Flood Zone VE and AE.

To address the requirement to maintain safe lateral access along the shoreline, a condition of approval has been added requiring the applicant to submit a shoreline access plan. The shoreline access plan will provide public access to and along the shoreline and provide public access signage.

The proposed request will not affect beach processes and will not create a risk for the proposed structures becoming loose, as the area along the shoreline will be a stabilized revetment.

Lastly, the proposed development will not create negative adverse impacts on public views to, from, and along the shoreline. A concern was expressed by the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) that they believe the view will be negatively impacted from the National Historical Site to the south and strongly recommend that plantings be set to visually offset any placement of a fence on the side of the Pu'ukohola Heiau National Historical Site. Based on these comments, a condition of approval will be added requiring the applicant to submit a master landscaping plan to the Planning Department, which will need to be reviewed and approved by the Planning Director prior to the submittal of Plan Approval to minimize any negative adverse impact on public views to the shoreline.

Based on the above findings, it is determined that the request to allow portions of the small boat harbor improvements within the shoreline setback area is consistent with the Shoreline Setback Law pursuant to Chapter 205A-46 and the criteria established in

Rule No. 8 of the Planning Commission's Rules of Practice and Procedure, and this request should be approved by the Planning Commission.

Approval of this Shoreline Setback Variance 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.
2. The applicant shall comply with all conditions of Special Management Area Use Permit No. 08-000028 and Use Permit No. 08-000013.
3. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
4. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of this permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
5. An initial 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 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 the 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 manner, the Planning Director may initiate to revoke this permit.

### USE PERMIT

The applicant is requesting a Use Permit to allow construction of the first phase of a small boat harbor called the Kawaihae Small Boat Harbor (South) within the Multiple-Family Residential – 1,500 square feet (RM-1.5) and Open (O) districts. The first phase will include the following improvements:

- Portion of a 45-foot wide, concrete three-lane boat launch ramp with two loading docks, one that will be ADA accessible. (Note: A portion of the improvements is seaward of the SMA)
- Main floating dock with accessible pedestrian ramp and gangway. (Note: A portion of the improvements is seaward of the SMA)
- Grading and drainage for vehicle and boat trailer parking areas.
- Grading for the realignment of the vehicle access through the project site.
- Boat wash down area.
- Comfort station with an individual wastewater system, outdoor shower, water and electrical service installation.
- Other miscellaneous fencing, signage, site lighting, grading and drainage as required.

Presently, approximately 23 light-draft vessel users in the Kawaihae boating community utilize a small basin (referred to as the Kawaihae Small Boat Harbor - North) located at the northwestern end of the Kawaihae Deep-draft Harbor (DDH) near the harbor mouth. This small basin is insufficient for complete operations of light-draft vessels. With the recent and projected increase in use of the DDH, there is a need to terminate the existing small boat operations at the DDH basin and development a separate small boat harbor dedicated for service to light-draft vessel movements and activities.

The proposed harbor improvements will separate the deep-draft harbor operations from the small boat harbor operations by relocating the small boat harbor from the existing north harbor to the south small boat harbor. This will greatly improve safety issues by separating the light-draft vessels from the larger commercial vessel activities. Currently, Kawaihae Harbor commercial traffic consists mainly of barges, but the harbor will soon have to accommodate significant amounts of passenger traffic with the proposed inter-island Super Ferry scheduled to begin service to the Big Island in 2010.

The applicant is proposing to improve and develop a portion of the existing Kawaihae SBH (South) to service light-draft watercraft operations in the tributary area. At this time, mooring blocks with buoys will be provided along the length of the floating



dock to provide berthing stalls for approximately 30 light-draft vessels, which will allow the light-draft vessels currently utilizing Kawaihae SBH (North) to be relocated to Kawaihae SBH (South). The mooring blocks will eventually be used in conjunction with permanent finger piers, which will be installed in a future phase of the project.

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits requires that such action conform to the following guidelines:

- A. The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan;
- B. The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties; and
- C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed small boat harbor meets the guidelines for approval of a Use Permit, for the reasons outlined below:

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Open along the shoreline, and Industrial and Medium Density Urban inland on the subject property.

The proposed development will complement the following goals, policies and standards of the Economic, Transportation and Recreation Elements of the General Plan:

Economic Element

- Economic development and improvement shall be in balance with the physical, social, and cultural environments of the island of Hawaii.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

### Transportation

- Encourage the development, maintenance, and enhancement of Hilo and Kawaihae Harbors as detailed within the State's Hawaii Commercial Harbors 2020 Master Plan.
- Continue to support the Department of Land and Natural Resources in its plans to develop a small boat harbor at Kawaihae.

### Recreation

- Public access to the shoreline shall be provided in accordance with an adopted program of the County of Hawaii.
- Improve existing public facilities for optimum usage.
- Recreational facilities shall reflect the natural, historic, and cultural character of the area.

The proposed development is part of the Kawaihae Small Boat Harbor (South) improvements. It will provide stalls for approximately 30 light-draft vessels along with other amenities such as a comfort station, boat wash down area, and parking area for boat trailers and vehicles. The full project build-out will provide a main floating dock along the existing revetted coastline with finger-piers, a concrete three-lane boat launch ramp, loading docks, accessible boat trailer parking in near proximity to the boat launch ramp, accessible comfort stations, buildings for a Boat Club, restaurants and administration space, ice-fish storage and fuel docks, and approximately 318 parking spaces to support future growth and development in the Kawaihae Small Boat Harbor (South). Some of these improvements are seaward of the certified shoreline.

The South Kohala Community Development Plan is currently before the Hawaii County Council for adoption. The South Kohala CDP Kawaihae Area Conceptual Plan identifies and supports the Kawaihae Small Boat Harbor South proposed improvements. The proposed request is consistent with the following land use goal of the Kawaihae Community in the South Kohala Community Development Plan:

Kawaihae Policy 1: The County and State Governments shall work closely with the Kawaihae Community to create a balance of recreational, commercial, and industrial uses around the harbor area while preserving the cultural and historic importance of the area.

This policy is achieved by several strategies listed within the Plan. The proposed request is consistent with the following strategies listed in the Plan:

Strategy 1.4: Expand commercial activities around the harbor area.

Strategy 1.5: Expand recreational activities around the harbor area and encourage canoe club activities.

The County Zoning for the subject property is Open along the shoreline, and General Industrial (MG-1a) and Multiple-Family Residential (RM-1.5) inland on the subject property. Yacht harbors and boating facilities are permitted uses within the General Industrial zoned district. A Use Permit is required to allow the small boat harbor improvements within the Multiple-Family Residential – 1,500 square feet (RM-1.5) and Open (O) districts. The Open (O) district applies to areas that contribute to the general welfare, the full enjoyment, or the economic well-being of open land type use which has been established, or is proposed. The property is located within the Special Management Area (SMA) and portions of the request are located within the 40-foot shoreline setback area. The applicant has submitted a Special Management Area (SMA) Use Permit application and a Shoreline Setback Variance application for improvements proposed 40-foot shoreline setback area along with this Use permit application.

Therefore, based on the above, the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code, the South Kohala Community Development Plan, and the County General Plan.

The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties. The project site is 5.81-acre portion of a 50.858-acre property. The project site has a small storage area and dock operated by YMCA, which will be relocated. Surrounding properties are similarly zoned Open, MG-1a and RM-1.5 and consist mainly of the Kawaihae Harbor Facilities. The proposed improvements will accommodate and support local fisherman, and provide safe and convenient harbor facilities that will allow a greater portion of the Kawaihae boating community to access the boat harbor.

The Pu'ukohola Heiau National Historic Park and Spencer Beach Park are located to the east of the subject property. Lastly, the property is situated along the shoreline. With added conditions of approval, the granting of the proposed use will not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure. Access to the project site is from Kawaihae-Mahukona Road, which is a state-owned roadway, through a secured entry gate at the Port of Kawaihae. Due to a Federal Department of Homeland Security requirement initiated in 2004, all visitors to the harbor must either be trained in Maritime Security (MARSEC) clearance or

properly escorted to the harbor site. In addition to the MARSEC requirement, DOT-Harbors will require all visitors who wish to access the Kawaihae SBH (South) unescorted to obtain a Transportation Worker Identification Credential (TWIC), effective April 15, 2009. TWICs are tamper-resistant biometric credentials, and all vessel owners will be required to obtain this additional card to moor their vessels at the Kawaihae SBH (South). There is an existing unpaved white coral access road, leading directly to the project site. This road is approximately 20 feet in width. A paved access road will be provided under a future phase.

The applicant is proposing to construct an accessible comfort station. The applicant is proposing to dispose of the wastewater via an individual wastewater system (IWS) comprised of a septic tank, distribution system, and absorption bed (leachfield). The Department of Land and Natural Resources-State Historic Preservation Division and Division of Aquatic Resources expressed concerns regarding potential negative impacts to the water quality within the small boat harbor as well as adjacent waters. To minimize these potential impacts, a condition of approval will be added requiring the applicant to use an aerobic septic treatment unit for the comfort station. Additionally, a condition of approval will be added requiring the applicant to hire an engineer to design a subsurface filtration system for the boat wash down area utilizing material to filter oil, gasoline, various chemicals, soaps, bleach and fish blood to prevent these contaminants from entering into the ocean.

County water is available to the site from an existing 12-inch waterline within Akoni Pule Highway. The project will be served through an existing 2-inch meter. Electrical will be provided only for site lighting and telephone services will not be provided to the project site until a future phase. Police, Fire and Emergency services are provided from Waimea. Based on the above, it has been determined that the project site is located within an area adequately served with essential services and facilities such as water, transportation systems, and other utilities, and will not unreasonably burden public agencies.

Based on the above findings, this request is approved subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all conditions of Special Management Area Use Permit No. 08-000028 and Shoreline Setback Variance No. 08-000003.
3. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

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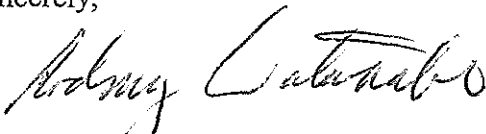
4. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of this permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
5. An initial 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 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 the 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).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate the revocation of the Use Permit.

These approvals do not, however, sanction the specific plans submitted with the applications 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,



Rodney Watanabe, Chairman  
Planning Commission

Mr. Martin Nakasone

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cc: Mr. Edward R. Underwood, Administrator/DLNR-DOBOR  
Ms. Valerie Suzuki/DLNR-Engineering Division  
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  
Plan Approval Section  
Mr. Gilbert Bailado