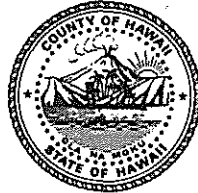


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
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CERTIFIED MAIL

April 17, 1995

Sandra Pechter Schutte, Esq.  
101 Aupuni Street  
Suite 104-A  
Hilo, HI 96720

Dear Ms. Schutte:

Special Permit Application 93-9  
Applicant: Kealakekua Development Corporation  
Request: Construction of Recreation Center  
Tax Map Key: 8-2-12:1 and 12

After duly held public hearings held by the Planning Commission on November 10, 1993, February 17, 1994, April 14, 1994, December 16, 1994, February 16, 1995, and March 30, 1995, and contested case hearing conducted by their hearing officer on November 22, 1994, and December 1, 1994, the Planning Commission voted to approve the above-referenced application. Special Permit No. 898 is hereby issued for a private recreation center east (mauka) of Captain Cook, mauka of the intersection of Koa Road and Hawaii Belt Road, Kealakekua, North Kona, Hawaii.

Approval of this request is based on the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND CONDITIONS

Procedural Matters

1. In April 1993, Kealakekua Development Corporation ("KDC") submitted an application to the County of Hawaii Planning Commission for a special permit, pursuant to Section 205-6, Hawaii Revised Statutes ("HRS"), and Rule 6 of the Planning Commission Rules of Practice and Procedure ("Commission Rules"), to allow the establishment of a private recreation center and a wastewater treatment facility on two separate four-acre sites within its property (TMK: 8-2-12:01 consisting of 11,184 acres

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of land) situated within the State Land Use Agricultural District, as part of a larger project proposed for KDC's property.

2. John L. Olson ("Olson") was granted standing as a party to the proceeding.
3. On April 14, 1994, the Commission considered and approved the petition of the Office of State Planning ("OSP") to intervene as a party to the special permit contested case proceeding. The Commission further denied an objection to the contested case hearing procedure filed by William Pa'akaula Kalawai'anui, and denied Kalawai'anui status as a party in the contested case proceeding. The Commission also voted to appoint David B. Kaapu as the hearing officer to preside over the contested case proceeding.
4. By letter dated July 26, 1994, OSP withdrew as a party from the contested case hearing.
5. KDC subsequently submitted notice to the Commission on September 30, 1994, that it intended to withdraw the portion of its special permit application seeking approval for the construction and operation of a sewage treatment plant on its property.
6. The contested case hearing on the special permit application was held on November 22, 1994, at the Kona Surf Hotel and on December 1, 1994, at the office of John L. Olson, Esq.
7. Present at the contested case hearings were Sandra Pechter Schutte, Esq., representing KDC; John L. Olson, representing himself and his family; and Frederick Giannini, Esq., Deputy Corporation Counsel, representing the County of Hawaii Planning Department.
8. On December 1, 1994, the hearing officer and parties made a visual inspection of the land and made the following findings:
  - a. Access to the land is presently over a one lane blacktop road.
  - b. Access from the edge of the proposed larger development is presently over a one lane unpaved road of about 0.7 miles; thereafter, the property was reached by foot.
  - c. The site is presently used as pasture and is lava, with some soil, grass and ohia and ko'a trees the land is of uneven grade.

- d. The site is pastoral, pristine and quiet.
  - e. There is no development of the property in view from the site of the proposed recreation center.
9. The special permit sought by KDC is part of a master planned project proposed by KDC for its 11,184 acre parcel of land ("KDC's land"). The entire parcel is situated within the State Land Use Agricultural District.
  10. KDC's master plan includes the proposed rezoning of KDC's land into a golf course agricultural park, equestrian center conservation area and various agricultural home sites with a minimum lot size of one (1) acre.
  11. The proposed rezoning was recommended for approval by the Commission in March 1994, subject to certain conditions, and the application is pending before the Hawaii County Council.
  12. KDC's master plan includes the establishment of a recreation center on approximately four acres of KDC's land in the vicinity of the golf course clubhouse complex.
  13. The uses proposed for KDC's land are permitted uses within the State Land Use Agricultural District, pursuant to the State Land Use law, Chapter 205, HRS, except for the recreation center.
  14. The recreation center is not a permitted use within the State Land Use Agricultural District; therefore, this use can only be established if a special permit is issued by the Commission in accordance with Section 205-6, HRS and Rule 6 of the Commission Rules.

#### Description of the Property

15. The four-acre parcel on which the recreation center is proposed to be located (the "Recreation Center Property") is situated on the east (mauka) side of the Hawaii Belt Road intersection, at Kealakekua, South Kona, Hawaii.
16. The Recreation Center Property is designated Agriculture under the State Land Use system. The Land Use Pattern Allocation Guide (LUPAG) Map of the County General Plan designates the Recreation Center Property for Extensive Agriculture and Orchard use. The present County Zoning for the Recreation Center Property is Agriculture, with a minimum lot size of 20-acres (A-20a).
17. The Recreation Center Property is entirely surrounded by KDC's land.

18. The Recreation Center Property and the surrounding KDC land are presently being used for cattle grazing.
19. Olson is an adjoining property owner to KDC's land; however, Olson's property is at least one-fourth mile away from the Recreation Center Property.
20. Physical access to KDC's land is by way of Kiloa or Koa Roads, both private roads, and KDC must still acquire additional land for the required roadway extending from the Hawaii Belt Road to its proposed development.
21. The Land Study Bureau's detailed land classification system, which rates land within the State from Class A (highest rating) down to class E (poorest rating) designating the overall (master) productivity rating of the Recreation Center Property as "C" or Fair and "E" or Very Poor.
22. The slope for the majority of the Recreation Center Property varies between five to ten (5-10) percent with lower elevations reaching gradients of 15 percent or more.
23. There are no known endangered or threatened plant species on the Recreation Center Property, and the area is not a habitat for any endangered animal species.
24. Although there are identified archaeological sites on KDC's land, there are no such sites where the recreation center facilities are proposed.
25. A natural drainageway intersects the Recreation Center Property; however, this drainageway is not located in the area in which the recreation center buildings are proposed.

Description of Recreation Center Project

26. The recreational center proposed by KDC is intended to provide various indoor and outdoor recreational amenities, including swimming and wading pools, deck area, a spa and tennis courts, showers and restroom facilities within the complex and parking adjacent to the complex.
27. The present floor plan shows approximately 6,000 square feet of developed area for the recreation center.
28. There are presently 45 parking spaces proposed by KDC for the recreation center facility, and there is adequate land area within the Recreation Center Property to provide additional parking if requested by the County.

29. KDC will construct and maintain, in private ownership, the road leading to the Recreation Center Property. Neither the State nor the County will be required to construct or maintain the roads leading to the Recreation Center Property.
30. KDC will develop a private source of water to service all of its lands as well as the Recreation Center Property. Water from the present County water system will not be required for the recreation center.
31. KDC proposes to develop an on-site private wastewater disposal system, in accordance with the State Department of Health standards, to handle the wastewater disposal for the recreation center.
32. KDC proposes to design and construct a drainage system as part of its larger development which will reduce the natural flow of surface water generated through KDC's land, and thereby reduce the risk of flooding to downstream properties. It is anticipated that this drainage system will handle any surface water runoff generated because of the recreation center development.
33. KDC intends to build and operate the recreation center as a private facility for the benefit of the lot owners on KDC's land. The recreation center is not intended for use by the general public.
34. A special permit may be issued by the Commission, with appropriate performance conditions, pursuant to Rule 6-7 of the Commission Rules, if the standards under Rule 6-6 of the Commission Rules are met. These standards require that the use:
  - (a) Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
  - (b) Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.
35. Rule 6-6 of the Commission Rules also requires the Commission to consider the criteria under Rule 6-3(b)(5). These criteria provide that:
  - (a) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
  - (b) The desired use shall not adversely affect surrounding properties;

- (c) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (d) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- (e) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- (f) The proposed use will not substantially alter or change the essential character of the land and the present use; and
- (g) The request will not be contrary to the General Plan and official Community Development Plan and other document such as Design Plans.

Use Promotes the Objectives of HRS Chapters 205, 205A and Rules of the Commission and Not Contrary to Land Use Law and Regulations

- 36. KDC's use of four acres of its property for a recreation center will not be contrary to the objectives sought to be accomplished by the State land use law because the area represents only a small portion out of KDC's 11,000 acre agricultural parcel. It is also consistent with the overall objectives of the land use law which permits recreational uses on Agricultural lands.
- 37. The recreation center proposed by KDC is an unusual use of the land since the facility will be used in conjunction with permitted uses in the Agricultural district. It will also be a reasonable use of the land within the district given the soil capabilities of the land which have been rated fair to poor.
- 38. The Planning Department, in reviewing the proposed special permit application, recommended to the Planning Commission that they grant the special permit.
- 39. The Planning Department found in its review of the special permit application that a special permit would be a more appropriate procedure than changing the LUC boundary and rezoning because the use of a special permit would enable the Planning Department to more closely limit construction and activity on the agricultural land and not open it up to the numerous possible uses which could be brought about by boundary amendment and rezoning, thereby keeping more control over the agricultural nature of the land.
- 40. In the past, the Planning Department has recommended special permits in situations involving recreation centers as parts of golf courses on agricultural land.

41. In evaluating the recreation center project, the Planning Department concluded that it was a reasonable use on agricultural land and that it would not have any essentially detrimental effects on agricultural resources.

Adverse Effect on Surrounding Property

42. KDC's proposed recreational center will not adversely affect surrounding properties.
43. KDC's proposed recreational center is sufficiently removed from surrounding properties so that it would not have any adverse visual impact upon the surrounding properties.
44. The Planning Department determined that as a part of the entire project, the recreation center would not cause drainage problems.
45. KDC has created a drainage plan which will incorporate drainage ditches across the watershed area on the property to intercept runoff water, and direct it to settlement basins, detention basins or sumps to prevent flooding.
46. KDC's flood plan will reduce the amount of runoff water that goes through portions of the area proposed for the recreation center.
47. Flooding has occurred infrequently on the property in question in the past; however, most of the runoff water has been directed by an existing drainage pattern into drywells, lava tubes and other natural areas. There have been no chronic flooding problems; however, properties located makai of this overall parcel have experienced damage to their property in the past from water runoff from the overall KDC parcel.

Impact on Public Agencies

48. The proposed recreational center should not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection because all of the roads and streets, sewage treatment, and drainage improvements are being developed privately by KDC. School facilities will not be needed for the recreation center and the impacts upon police and fire protection would be negligible given the nature of the private facility.
49. KDC plans to dispose of wastewater generated at the site of the recreation center by an on-site disposal system similar to a septic tank, which requires Health Department approval, but no separate permission from the Planning Department.

50. The recreation center proposed by the special permit application should not generate more than a minimal traffic impact outside of the project site, because the majority of the traffic going to and from the recreation center would be contained on the project site. The recreation center is designed as an amenity to the proposed subdivision and golf course and will not be open to the public; therefore, most traffic will be on-site and not from Mamalahoa Highway. Neither the County nor the Applicant conducted an independent traffic study for the recreation center alone; however, the overall project including the golf course, subdivision and recreation center would generate approximately 200 vehicle trips between 7:30-8:30 a.m. daily and between 4:00-4:30 p.m. onto or from Mamalahoa Highway.

Unusual Conditions, Trends and Needs

51. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were first established in the 1960s which would justify the approval of a recreation center by means of a special permit. In the 1960s, communities depended in large part on government to provide them with recreational facilities, including parks and community centers, whereas today those facilities must be provided by the private sector. Also, there has been a strong emphasis for the last ten years on special amenities, such as recreational facilities, as part of an overall development package. These amenities were not common when the district boundaries were first established.

Land Unsited for the Uses Permitted Within the District

52. The land within the proposed area is designated as Agricultural.
53. The land on which the proposed recreation center is being proposed contains marginal agricultural lands and, thus, is unsited for agricultural activities.
54. The Planning Department noted in its recommendation that the soil in the area of the property in question is rated as C (fair) or E (very poor).
55. The overall plan of the recreation center and the surrounding development was to preserve the best agricultural lands for agricultural use.

Use Will Not Substantially Alter or Change the Essential Character of the Land

56. The proposed recreational center will not substantially alter or change the essential character of the land and its present use because the entire 11,000 acres surrounding the recreational



center site will remain in agricultural use or other uses permitted on agricultural lands.

Use Will Not Be Contrary to General Plan

57. The proposed recreational center will not be contrary to the General Plan because given the small size of the parcel relative to the overall property, the emphasis of the overall plan will remain in agricultural uses as recommended by the General Plan.
58. The Commission has issued special permits in the past for recreation centers situated lands within the State Land Use Agricultural District.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this special permit application as well as the parties involved herein.
2. The recreation center proposed by KDC is an unusual and reasonable use within the agricultural district which may be permitted under Section 205-6, HRS, and Rule 6 of the Commission Rules.
3. Based upon the testimony and evidence presented, the proposed recreation center located in the KDC property is not contrary to the objectives sought to be accomplished by the land use law and regulations, because it will not be detrimental to agricultural activity on the most productive types of soil.
4. Based on the testimony and evidence presented, the proposed recreation center on the KDC property will not adversely affect surrounding properties.
5. Based on the testimony and evidence presented, the proposed recreation center on the KDC property will not unreasonably burden public agencies to provide roads and streets, sewers, water drainage, school improvements, police and fire protection.
6. Based on the testimony and evidence presented, unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.
7. Based upon the testimony and evidence presented, the subject property is of a relatively unproductive soil type and is unsuited for the uses permitted within the district.

8. Based upon the testimony and evidence presented, the proposed recreation center will not substantially alter or change the essential character of the land and the present use.
9. The proposed use is not contrary to the General Plan.
10. If any finding of fact herein is found, upon review, to be a conclusion of law, then that finding shall be considered a conclusion of law notwithstanding its placement in these findings, and if any conclusion of law herein is found, upon review, to be a finding of fact, then that conclusion shall be considered a finding of fact notwithstanding its placement in these findings.

CONDITIONS

Special Permit No. 898 for the recreation center is approved subject to the following conditions, under Section 205-6, HRS and Rule 6 of the Planning Commission.


1. Approval of the Department of Health of any wastewater or sewage disposal.
2. All surface water run-off generated by the recreation facility be disposed of on-site. Approval of the drainage design and construction shall be by the Department of Public Works.
3. That access to the recreation center be constructed in a manner meeting with the approval of the Department of Public Works and completed prior to the issuance of the certificate of occupancy for the recreation center.

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

Sandra Pechter Schutte, Esq.  
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Should you have any questions, please feel free to contact Connie Kiriu or Daryn Arai of the Planning Department at 961-8288.

Sincerely,

  
Wilton K. Wong, Chairman  
Planning Commission

CRK:syw  
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xc: Honorable Stephen K. Yamashiro, Mayor  
Planning Director  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
West Hawaii Office  
State Land Use Commission  
Department of Land & Natural Resources  
Plan Approval Section  
John L. Olson, Esq. (Certified Mail P008 113 364)  
David Kaapu, Esq.  
Department of Health  
Office of State Planning