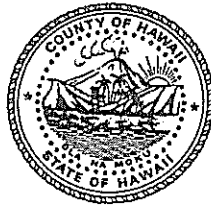


Harry Kim  
Mayor



**County of Hawaii**  
**PLANNING COMMISSION**

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

July 28, 2004

Mr. Shawn Nakakura  
77-110B Kalaniuka Street  
Holualoa, HI 96725

Dear Mr. Nakakura:

Use Permit Application (USE 04-002)  
Applicant: Shawn Nakakura & Sam Lee  
Request: Cremation of Human and Animal Remains Within the  
ML-1a District  
Tax Map Key: 7-3-58:28

The Planning Commission at its duly held public hearing on July 16, 2004, voted to adopt the attached proposed Findings of Fact, Conclusions of Law and Decision and Order. Use Permit No. 200 is hereby granted to allow the operation of a cremation business within portion of a warehouse building situated within the Limited Industrial 1-acre (ML-1a) district. The property is located along the north side of Hukiloa Drive within the Kohanaiki Business Park Subdivision which is situated along the east side of Queen Kaahumanu Highway (Highway 19), Auhaukeae 2<sup>nd</sup>, North Kona, Hawaii.

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

Sincerely,

Fred Galdo, Chairman  
Planning Commission

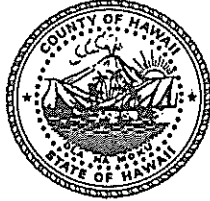
Lnakakura01pc  
Enclosure

cc/enc: Mr. Edmund Wong  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning - Kona  
~~State Land Use Commission~~  
DLNR-HPD/Kona  
Rodney Haraga/DOT-Highways, Honolulu

MD  
086730

JUL 28 2004

Harry Kim  
Mayor



Lincoln S.T. Ashida  
Corporation Counsel

Gerald Takase  
Assistant Corporation Counsel

## County of Hawaii

### OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • FAX (808) 961-8622

### TRANSMITTAL LETTER

TO: Sarah Watanabe  
Department of Planning

DATE: July 21, 2004

FROM: Patricia K. O'Toole, Deputy Corporation Counsel

RE: *In the Matter of Application of Shawn Nakakura and Sam Lee*

COPIES/ITEMS	DATE	DESCRIPTION
Original		Findings of Fact, Conclusions of Law, Decision and Order

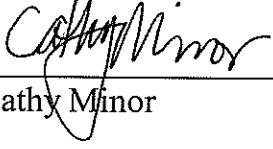
#### TRANSMITTED FOR:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Your information and files        | <input type="checkbox"/> Your approval                         |
| <input type="checkbox"/> Your signature and return                    | <input type="checkbox"/> Your review & comments                |
| <input type="checkbox"/> Your signature and forwarding as noted below | <input checked="" type="checkbox"/> See remarks below          |
| <input type="checkbox"/> Per your request                             | <input type="checkbox"/> Filing and return (Envelope enclosed) |

REMARKS: *The change Sharon wanted on page 6 has been made.*

CORPORATION COUNSEL

By

  
Cathy Minor

Enclosure

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

BEFORE THE PLANNING COMMISSION

COUNTY OF HAWAI'I

In the Matter of the Application of

USE NO. 04-002

SHAWN NAKAKURA and SAM LEE for a Use Permit to allow operation of a cremation business within a portion of a warehouse building situated within the Limited Industrial 1-acre (ML-1a) district situated along the north side of Huliko Drive within the Kohanaiki Business Park Subdivision, along Queen Kaahumanu Highway (Highway 19), Kohanaiki, North Kona, TMK: (3) 7-3-58:28

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECISION AND ORDER

Applicants SHAWN NAKAKURA and SAM LEE request a Use Permit under Chapter 205 of the Hawai'i Revised Statutes (H.R.S.) and Rule 6 of the Hawai'i County Planning Commission Rules of Practice and Procedure (HCRP) to operate a cremation business within a portion of a warehouse building situated within the Limited Industrial 1-acre (ML-1a) district on a 1.009 acre parcel within Kohanaiki Business Park, located along the north side of Huliko Drive within the Kohanaiki Business Park Subdivision Phase II, along Queen Ka' ahumanu Highway (Highway 19), Kohanaiki, North Kona, TMK: (3) 7-3-58:28. Operations will be conducted on leased property comprising 1,875 square feet (the far southern bay nearest Hulikoa Drive of the six bays) to be constructed within an enclosed warehouse. This southern bay shall hereafter be referred to as the Property.

Pursuant to authorization of the Planning Commission, the Planning Commission as a whole, with its counsel, Deputy Corporation Counsel Ivan Torigoe, conducted a contested case hearing on the application for use permit by Applicants Shawn Nakakura and Sam Lee for Use Permit to operate a cremation business. The hearing took place on May 28, 2004, beginning at 9:04 a.m., at 75-5660 Palani Road, Kailua-Kona, Hawai'i, First Chair Earl Fujikawa presiding. The applicants, Shawn Nakakura and Sam Lee, were in attendance before the Hawai'i County Planning Commission (Chairman Fred Galdones absent and excused). Also present were Chris Yuen, Planning Director, Norman Hayashi, Planning Program Manager, Phyllis Fujimoto, Staff Planner, Jeff Darrow, Staff Planner, and Deputy Corporation Counsel Ivan Torigoe. Edmund Wong appeared representing interests with objections to the application with Antone Vincent, witness in support of objectors. Neither Applicants nor the Planning Director objected to Mr. Wong's request for intervention as a party.

Upon motion duly made by Commissioner Springer, Seconded by Commissioner Smith, and adopted by the Planning Commission, Edmund Wong, ("Intervenor") owner and representative for the owners of adjoining real property, including real property known as TMK: (3) 7-3-009:013, having objections to the application, was granted standing as party to the hearing.

Having heard and considered the application, the presentations by the applicants, the Director and staff of the County Planning Department, Mr Edmund Wong, Mr. Antone Vincent and from all those who appeared before them to present material in connection with this application, The Planning Commission makes the following Findings of Fact, Conclusions of Law, Decision and Order:

## FINDINGS OF FACT

1. The Property, the warehouse in which it is located, the parcel and Kohanaiki Business Park Subdivision are zoned ML-1a. Parcels to the north are zoned Open and A-5a. Beyond the business park to the south is a large open area zoned Open and A-5a. All of the activities to be conducted in connection with the Use Permit will be within the warehouse bay (away from public view).

2. This approval and 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 parcel is 1.009 acres in size and is located in the Kohanaiki Business Park, Phase II. It is located approximately 1/4 mile north of the Kaloko Light Industrial Area and approximately 3/4 mile east from the Queen Ka'ahumanu Highway / Hulikoa Drive intersection on Hulikoa Drive. The site is under construction. There will be a warehouse which will have six bays that are to be 1,875 square feet each. The proposed use will be located within the far southern bay. To the south of the property is a large open space. The immediate surrounding properties are zones ML-1a within the Kohanaiki Business Park. To the north are large parcels zoned Open and A-5a. To the west within the business park are approximate 1-acre size lots that are zones ML-1a and CV-20. To the south are several large parcels zoned Open and A-5a and further south is the Kaloko Light Industrial area, which has lots zoned ML-1a and MCX-1a. To the east are lots within the business park zoned ML-1a.

3. Cremation ovens approved for use in Hawai'i must pass stringent environmental standards. Emissions from the cremation ovens shall be so reduced that they are not detrimental to the public. The ovens are required to be clean burning by reason of Environmental Protective Agency (EPA) standards. Operated properly, the ovens are smokeless and odorless. The surrounding properties as well as the Community's character will not be adversely affected by the operation.

4. At this time, there are no cremation facilities located in West Hawai'i. Only Dodo Mortuary and Homelani cremate human remains on the Big Island. Both are located in Hilo. There is only one pet cremation facility, which is located In Kea'au. A cremation service in West Hawai'i will benefit the residents of the west side of the island by saving them time and money by decreasing the delays and lowering the transportation costs now incurred because of the need to use services in East Hawai'i.

5. The development proposed satisfies the requirements for the protection of historical, cultural, and traditional practices:

a. Intervenor has raised issues of potential conflict of the proposed use with historical, traditional and cultural practices. The parcel and the business development in which this Property is located has been completely graded. The Hawai'i State Department of Land and Natural Resources reports that no historic properties will be affected by the project. The evidence presented including the presentation of the Intervenor indicate that there are no remains or other physical manifestations of cultural sensitivity located on the land itself. No valued cultural, historical or native resources nor any traditional and customary native Hawaiian rights were demonstrated to have been practiced in the area.

b. The property is developed to the extent that it should be regarded by the Planning Commission as a fully developed property for the purposes of considering protection of cultural resources. Intervenor does not object to the practice of cremating human remains, in general by other cultures, but rather objects to the practice within what Intervenor regards as the ahupua'a of the family. Intervenor does not object to the cremation of remains that are not human remains. Intervenor has not presented evidence that a currently active practice of a traditional or cultural activity within the premises of the Property will be interrupted or restricted by this proposed use. Intervenor has not presented evidence that the objectors live on the adjoining property, or that their own observance of cultural practices will be forbidden, impaired, restricted or limited. They are offended that the practice of other cultures is odious in their view and complain that such practice should not be conducted within an area in which they will observe or be aware of the performance.

c. The Planning Commission does not regard the issues to be limited to a consideration of physical remains or archeological evidence, but rather includes an obligation to balance the impacts of the proposed use on cultural or traditional practices of and upon the adjoining properties and the rights of the applicant to development. The Planning Commission is sensitive to the concerns of the adjoining property owners, but finds that the evidence does not establish actual impairment, restriction or adverse impact on the conduct of any cultural practices. The Planning Commission finds that on balance there is not sufficient

adverse impact on any native Hawaiian cultural practices to justify denial or restriction of the use requested.

d. The Planning Commission finds that there is no impact on historical resources. It is not anticipated that the application will have any adverse impact on cultural or historical resources in the area. The Planning Commission finds that potential impacts on cultural and traditional practices are adequately addressed in the proposed development.

6. This approval and the granting of the proposed use will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code, and the County General Plan. The Planning Commission finds and determines that Crematoriums are business uses that are in support of but not necessarily compatible with the permissible activities and uses in other commercial districts. The proposed use is consistent with the intent of the General Plan designation for the area and the use will not alter the appearance or character of the neighborhood.

7. The crematorium as proposed will complement the following policies of the General Plan:

a. Economic development and improvements shall be in balance with the physical and social environments of the island of Hawai'i.

b. The County of Hawai'i shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

c. The County of Hawai'i shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.



d. The development of commercial facilities should be designated to fit into the locale within minimal intrusions while providing the desired services.

Therefore, the proposed crematorium operation will not substantially alter the character of the surrounding neighborhood, will be consistent with the intent of the Zoning Code for this district, is consistent with the General Plan designation, and is in keeping with the policies of the General Plan.

8. This approval and the granting of the proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection or other related infrastructure. Hulikoa Drive is a two lane, sixty foot wide roadway with paved swales that provides access to the Kohanaiki Business Park and the property. No funeral services will be performed at the business site. Traffic impact will be minimal under this proposed use. Wastewater will be disposed of in accordance with applicable rules of the Department of Health and the Department of Environmental Management. The property is located in Zone X and is not located within any designated flood plain. Water, telephone and electricity will be provided from existing facilities to the new warehouse. Those facilities are presently adequate to provide such services. Police and fire protection are already located within four miles of the property.

9. The project site is located over one mile from the nearest shoreline and is located within an industrial business park. The existing operation will not impact any recreational resources, including access to and along the shoreline; any mountain access; any scenic, open space or visual resources, coastal ecosystems, and/or marine coastal resources. The property will not be affected by any coastal hazards nor by

beach erosion. Therefore, the approval of the subject request shall not be contrary to the objectives and policies of the Coastal Zone Management Program.

10. The Use Permit requested shall be to allow the operation of a cremation business within a portion of the warehouse building, as described to permit cremation of human and animal remains in EPA approved ovens built specifically for the purpose. The permit is approved under the representation that it will operate between the hours of 6:00 a.m. to 10:00 p.m. daily, with up to two full time employees, providing services necessary for the cremation of the remains of 50 - 200 individuals each year, with additional services as necessary for the cremation of the remains of pet animals, in an number or amount that is unknown at this time.

#### CONCLUSIONS OF LAW

1. Under Section 25-2-61 of the Hawai'i County Code, the proposed use for a cremation business is allowed in the Limited Industrial (ML-1a) zone, provided that a use permit is obtained and maintained.

2. Under Section 25-2-65 of the Hawai'i County Code, a use permit may be granted by the Planning Commission upon the findings made above that (1) the granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of Chapter 25 of the Hawai'i County Code and the County of Hawai'i General Plan, (2) 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, to surrounding properties, and (3) the granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

3. The proposed use meets the minimum requirements of Section 25-2-65 of the Hawai'i County Code.

4. The proposed use is consistent with the objectives, goals and standards set forth in the Hawai'i County General Plan.

5. The Record does not establish any Native Hawaiian cultural practices being exercised on the subject property which require protection.

6. The Record does not establish sufficient adverse impact on any Native Hawaiian cultural practices on surrounding properties or their owners that would justify restrictions on or denial of the use permit application.

7. Based on the above, the proposed use for a cremation business is approved subject to the following conditions:

1) The applicants, successors or assigns shall be responsible for complying with all stated conditions of approval.

2) The cremation business must be established within five (5) years from the effective date of this permit.

3) The applicant shall submit water demand calculations to the Department of Water Supply. Prior to water service being granted, a reduce pressure backflow preventer shall be installed by the applicants, just after the meter on private property, and inspected by the Department of Water Supply.

4) The applicants shall comply with all applicable laws, rules, regulations and requirements of other affected agencies, including, the State of Hawai'i Department of Health, the County of Hawai'i Department of

Environmental Management, County of Hawai'i Department of Public Works and the federal Environmental Protection Agency (EPA) for this use.

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. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, their successors, or assigns and are not the result of their fault or negligence.

b. Granting of time extension would not be contrary to the original reason for the granting of the permit.

c. The time extension granted shall be for a period not to exceed the period originally granted for performance, that is, a condition to be performed within five years, may be extended for up to one additional five year period.

#### DECISION AND ORDER

IT IS HEREBY ORDERED BY THE PLANNING COMMISSION that the application of Shawn Nakakura and Sam Lee for a special permit to operate a cremation business within the Kohanaiki Business Park Subdivision, Unit II, is approved subject to the following conditions:

1) The applicants and their successors and assigns shall be responsible for complying with all stated conditions of approval.

2) The cremation business must be established within five (5) years from the effective date of this permit.

3) The applicant shall submit water demand calculations to the Department of Water Supply. Prior to water service being granted, a reduce pressure backflow preventer shall be installed by the applicants, just after the meter on private property, thereafter to be maintained by applicants at the expense of applicants, and inspected by the Department of Water Supply.

4) The applicants shall comply with all applicable laws, rules, regulations and requirements of all other agencies with jurisdiction over the premises, including, but not by way of limitation, the State of Hawai'i Department of Health, the County of Hawai'i Department of Environmental Management, the County of Hawai'i Department of Public Works, and the federal Environmental Protection Agency (EPA) for this use.

5) An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director, at the discretion of the Planning Director, upon the following circumstances:


a. Non-performance is as a result of conditions that could not have been foreseen or are beyond the control of the applicants, their successors, or assigns and are not the result of their fault or negligence.

b. Granting of time extension would not be contrary to the original reason for the granting of the permit.

c. The time extension granted shall be for a period not to exceed the period originally granted for performance, that is, a condition to be performed within five years, may be extended for up to one additional five year period.

Dated: Hilo, Hawai'i, July 28, 2004.

PLANNING COMMISSION

By   
Chairperson