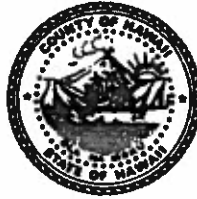


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

October 21, 2008

Roy Hollowell, Project Manager/LPLS
M&E Pacific, Inc.
100 Pauahi Street, Suite 207
Hilo, HI 96720

Dear Mr. Hollowell:

TENTATIVE APPROVAL
SUBDIVIDER: KI'ILAE ESTATES, LLC
"Ki'ilae Small Lots"

Proposed Consolidation of Lots 18 through 22, Inclusive, of Ki'ilae Farms Subdivision,
And Resubdivision Into Lots 51 through 72, Inclusive, and Roadway Lots 73 & 74,
Kauleoli 1st & 2nd, South Kona, Island of Hawai'i, Hawai'i

TMK: 8-5-005:Portion 019 (SUB-07-000637)

Please be informed that Tentative Approval of the revised preliminary plat map dated March 25, 2008, is hereby granted with modifications and conditions.

The subdivider is now authorized to prepare detailed drawings of the subdivision plan in accordance with Chapter 23, Subdivision Control Code, County of Hawaii, as modified. Before final approval can be granted, the following conditions must be met:

- 1) Water System.
 - a) Construct necessary water system improvements, which shall include, but not be limited to:
 - i) Water mains capable of delivering water at adequate pressure and volume under peak-flow and fire-flow conditions; minimum diameter of mains shall be 6 inches; and
 - ii) Service laterals that will accommodate the appropriate size meter to each lot.
 - b) Submit construction plans and design calculations prepared by a professional engineer, registered in the State of Hawaii for review and approval by the Department of Water Supply.
 - c) Submit the appropriate documents, properly prepared and executed to convey the water system improvements and necessary easement to the Water Board of the County of Hawaii prior to final subdivision approval being granted. A registered land surveyor shall stamp and certify the metes and bounds description within the conveyance documents. However, prior to water meter services being granted to the development or any lots within, the conveyance documents shall be accepted by the Water Board.

- d) Comply with all other policies and requirements of the Department of Water Supply's Rules and Regulations. Noncompliance may be cause for voiding this water commitment at which time availability will be subject to change in accordance with prevailing water system conditions, policies, and Rules and Regulations.
- 2) Drainage
 - a) Identify all watercourses and drainage ways and designate areas within as "approximate areas of flood inundation."
 - b) Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy Department of Health (DOH) drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.
- 3) Wastewater
 - a) Individual wastewater treatment systems are allowed according to the Department of Health. To ensure protection of the groundwater and coastal water quality, deed covenants similar to those required for Ki'ilae Farm Lots Subdivision shall require homeowners to install a septic system with leach field or aerobic system even if the Department of Health may allow for the use of cesspools. A draft of this deed covenant shall be submitted to this office for review and approval prior to the issuance of final subdivision approval.
- 4) Access and Roadway Improvements
 - a) Provide corner radii at the intersection of the right-of-way lines of Roadway Lots 73 and 74 with Ki'ilae Road in conformance with Section 23-45 of the Hawaii County Code (HCC).
 - b) Roadway design/layout including allowable street grades and minimum sight distance requirements shall conform to the standards of the code.
 - c) For the proposed subdivision roads, construct minimum 20-ft. wide agricultural pavement within a minimum of 50-ft. wide right-of-way conforming to DPW Std Det R-39. Where grades are 8% or greater, the roadway section shall be paved per DPW Std Det R-34.
 - d) Turnarounds shall conform to HCC, Section 23-48.
 - e) Submit proposed street names conforming to the adopted street naming policy of the County of Hawaii.
 - f) Submit construction plans and drainage report for review and comment.
 - i) Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways.
 - ii) For planned drywells, satisfy Department of Health (DOH) drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.
- 5) Historic/Cultural Requirements.
 - a) Implement the Archaeological Preservation Plan for the Ki'ilae Farms Subdivision including any conditions or modifications required by SHPD.
 - b) Implement applicable conditions of Burial Treatment Plan.

c) Protection of Native Hawaiian Gathering Rights and Cultural Practices.

i) Identification of cultural, historical, and natural resources.

The following information is available in the Planning Department files and records to determine the identity and scope of valued cultural, historical, and natural resources in the area of the subdivision:

- Archaeological inventory survey (Rechtman 2001).
- Oral history interviews (Vol. II of inventory survey).
- Letters on file in SUB No. 2001-0132.
- Testimony in Board of Appeals hearings on SUB No. 2001-0132 from Wayne Leslie, Sr., and Jim Medeiros, Sr.
- Letter dated Jan. 27, 2003 regarding search for pilo (maiapilo) plant.
- Aerial photos of site.

The cultural and natural resources within the subdivision are historic sites, burial sites, the possible pilo plant, and 'uhaloa plants. Within the parcel below the Old Government Road, that is not part of this subdivision, Jim Medeiros, Sr. identified a "laena", or departure point for souls of the dead. The shoreline, again not part of this subdivision, is used for gathering limu, 'opihi, and a'ama crab and for pole and throw net fishing. The ocean fronting the property, again not part of the subdivision, is used for fishing from boats, including 'opelu fishing, and for diving.

ii) Extent to which these resources may be affected or impaired by the proposed action:

The proposed subdivision does not in itself change the uses that can be made of the property, because uses allowed by the existing A-5a zoning remain in effect. The subdivision does require the construction of roads, water lines, and drainage systems, and increases the number of homes that can be built on the property without special approval. The Zoning Code and Rule 13 of the Rules of the Planning Director allow one farm dwelling to be built per lot. Additional farm dwellings can be built upon approval of a farm plan and the signing of a farm dwelling agreement. The approval of the subdivision will increase the number of homes that can be built on the property. There will probably be areas associated with the dwellings that are cleared for driveways and accessory buildings. Areas now in brush could be developed for agriculture, that can also involve considerable land alteration, but agricultural development can occur whether the subdivision is built or not.

iii) Feasible actions to prevent or mitigate harm to resources:

The physical integrity of individual historic sites will be protected by the terms of the Archaeological Preservation Plan, which requires that significant historic sites be preserved, with buffers. The subdivision shows these sites as archaeological easements, so that buyers

will have notice of the sites, and governmental personnel who review grading, grubbing, and building permits will also be aware that land-disturbing activities are not allowed within the buffers. The burials will be preserved under the terms of the approved Burial Treatment Plan.

Because the subdivider could not find any pilo plants, and the testimony was not specific enough to locate the plant, it is not possible to include a condition requiring the preservation of this plant. The subdivider will, however, create an easement on the parcel mauka of the Old Government Road, which shall be shown on the final plat map, where individuals can cultivate pilo or other native plants. Pilo, or maiapilo (*Capparis sandwichiana*) is found in lowland lava areas in Kona, such as at Kohanaiki, Keopuka, Keauhou, Mahai'ula, and in the vicinity of the Kona Airport (including some plants along the right-of-way of the Queen Kaahumanu Highway). 'Uhaloa is an extremely common weed, found in vacant lots everywhere, and probably occurs along the Old Government Road as well as other publicly accessible areas. Hau is also extremely common.

Concerns were expressed in the Board of Appeals hearings involving SUB No. 2001-0132 over possible effects on ocean water quality and ocean resources from the prior subdivision. In general, a new subdivision may affect coastal water quality in two possible ways: direct surface runoff, and the possibility that nutrients might leach through the surface to the groundwater and ultimately to the sea.

Direct surface runoff from this subdivision to the ocean caused by this development is unlikely. The subdivision itself involves ground clearing only for roads. It does not involve construction of a golf course, house pads, or other major changes to the surface. Grading for roads and the construction of roads require an NPDES Permit because more than one acre is being disturbed. The NPDES Permit will have standard requirements for management practices to reduce the likelihood of surface runoff.

There are no known perennial or intermittent streams on the property. There is a relatively flat area, about 600'-1800' wide, between the subdivision and the sea. This flat area is within the State Land Use Conservation District. It is almost entirely pahoehoe lava with no soil. Even if surface runoff were to reach this area it is probable that it would soak into the ground before reaching the sea.

The 1973 Soil Survey for the Island of Hawaii classifies most of the property as rLW, which is nearly bare pahoehoe lava, RB, which is rough broken land, and, nearer the Mamalahoa Highway, as rPYD, described as a shallow soil layer of "extremely rocky peat", with 40-50% surface outcrops of pahoehoe lava. All of these soil types are well drained. The infiltration rate for rPYD is given as 6.3"-20" per hour. Grading and road construction will be occurring in lava rock.

Construction of roads and homes will increase the amount of impervious surfaces, and thus reducing the capacity of the ground to absorb storm water. Current Department of Public Works drainage standards will require drywells capable of absorbing a ten-year rainstorm. Even if every lot is eventually developed with a 5000 square foot home and a 5000 square foot driveway, the impervious surfaces due to home and driveway construction would only be about 5% of each lot. The paved portion of subdivision roads will be only about 2% of the total land area of the subdivision.

Additional nutrients to the groundwater could potentially come from human waste from residents of the subdivision, or from fertilizers used for agriculture or landscaping. If every lot had a home, and half of the lots had an additional farm dwelling, there could be approximately 225 individuals living on the property (using an average of three persons per dwelling, which is slightly more than the island average). The parcel is about .4 miles wide. In the 2000 census, the Honaunau-Napo'opo'o CDP had a population of about 2400, in an area about 5 miles wide. Almost all existing homes in South Kona utilize cesspools for disposal of human waste.

The concern with human waste is primarily nitrogen. Phosphorus, and potassium are present in lower quantities. Two hundred twenty five (225) residents could produce about 1000 kg of nitrogen per year. (The figure of 8991 kg given by Dr. Richard Bennett in the Board of Appeals hearing appears to be the result of a misplaced decimal point and is ten times too high.) Farming has the potential adding much greater amounts of nutrients than human waste: recommended fertilization levels for coffee are about 70 kg/acre/yr., so even a 15 acre coffee farm could put more nitrogen into the ground than a subdivision with 225 residents. While agricultural crops do take up nutrients through their roots (that is the purpose of fertilizing) some nutrients will leach away even in a well-managed system, depending upon the type of fertilizer used, soil types, rainfall, and the type of plants.

The potential for nutrient contamination by human waste can reasonably be mitigated by a septic system. A septic tank with a leach field, or an aerobic septic tank, can remove a substantial percentage of the nitrogen present in human waste. Accordingly, a condition of subdivision approval will require homeowners to install either option even if cesspools might be allowed by the Department of Health. (A cesspool does not remove any nutrients in itself, although some nutrients may be removed by natural processes in rock and soil.)

The potential for pollution from farming is a very difficult issue to deal with in a subdivision approval. The potential depends greatly upon individual management techniques. It is not known at this time if nutrients leaching from fertilizers in South Kona are having a detrimental effect on ocean water quality. If nutrient leaching from farms is determined to cause an environmental problem in the area, this would have to be dealt with generally and not just in one subdivision. As a general land use policy, this land is zoned for agriculture, the land use

system encourages farming, and if the subdivision led to increased farming activity, that would have to be regarded, generally, as a positive result. Whether or not the property is subdivided, the cultivation (and fertilization) of crops is a permitted use.

6) Natural Beauty.

a) Discussion:

The 1989 Hawaii County General Plan, at p.36, in a listing of examples of natural beauty in the South Kona district, includes "Ki'ilae, T.M.K. No. 8-5-5:19." This tax map key number actually identifies the Kauleoli parcel, which is the subject of the present subdivision. The Ki'ilae portion, more northerly, T.M.K. No. 8-5-5-22, has been sold by this developer to the Trust for Public Lands and is supposed to become part of the Pu'uuhonua o Honaunau National Historical Park. Although funds have not been appropriated by Congress yet to complete the purchase, this will probably occur and the area will be kept in a largely natural state.

The coastal area fronting this subdivision, a parcel 600'-1800' deep, is in the State Land Use Conservation District and is not part of this subdivision. Any development in this area that might affect the natural beauty would require a Conservation District Use Permit.

The primary vantage point from which the public might see man-made features in this subdivision would be from the north side of Ki'ilae Bay, on the southerly side of the point that contains the Pu'uuhonua o Honaunau. The Board of Appeals record in the prior subdivision contains a photograph from this vantage point. (Most visitor activity at the National Historical Park is currently at the north side of the point, near the visitor center and the Hale o Keawe.) The subdivision area and shoreline are not very visible from Mamalahoa Highway or the Ke Ala O Keawe Rd. because of terrain and trees. (The photograph taken from Highway 11 in the record of the Board of Appeals is taken from a point approximately 2 miles from the nearest point of the subdivision.) From the vantage point across Ki'ilae Bay, the subdivision infrastructure (roads) would probably not be very visible. The subdivision does not require any streetlights. Eventually, homes will probably be visible, but at a distance of 4000' -11,000' across Ki'ilae Bay. The subdivision's proposed covenants limit the heights of homes to 30' (versus the normal height limit of 35' in an A-5a zone) and forbid reflective finishes. These covenants, plus the distance, will reduce any visual impact from the construction of homes.

b) Mitigation: Building heights and reflective finishes shall conform to Sec. 12.1 and 12.2 of the Declaration of Covenants submitted by transmittal dated October 30, 2003.

7) Compliance with Coastal Zone Management Area. The proposed subdivision does not involve land within the Special Management Area, does not constitute "development" within the SMA, and hence does not require an SMA permit. All land in Hawaii is included in the "Coastal Zone Management Area", and is subject to the "objectives and policies" stated in H.R.S. Sec. 205A-2. These are broad

policies and cannot, for example, be used to deny approval to a subdivision that is otherwise consistent with zoning and with more specific land use regulations. The proposed subdivision is, however, not inconsistent with the applicable objectives and policies in H.R.S. Sec. 205A-2.

- 8) **Agricultural Use.** Upon review of draft covenants, conditions, and restrictions for the Kīçilae Farms Subdivision, of which this project is a part of, the subdivision covenants do not prohibit or limit agricultural activities. The land is not characterized as prime or important agricultural land under the ALISH system. Under the Land Study Bureau classification, the area affected by this subdivision is classed as "E" or extremely poor for agriculture. From the oral history reports, the only agricultural use of the property for many years before this subdivision application was as a very poor quality grazing area, except that citrus and coffee were previously grown mauka of the proposed subdivision. The property is zoned A-5a and if the subdivider complies with the Subdivision Code, it is entitled to subdivide lots with a minimum of 5 acres. There are commercial coffee farms and orchards in Kona on 5 acre lots. The provision of water supply may make some agricultural use of the property more feasible.
- 9) **All easements affecting proposed lots shall be identified for its purpose and to which proposed lot(s) and/or grantee(s) the easement is in favor of. This shall be shown on the final plat map.**
- 10) **Property Tax Certification.** Submit written proof that all taxes and assessments on the property are paid to date.
- 11) **Surveyor's Certification.** Place property markers in accordance with the final plat map. Surveyor shall submit certification upon completion.
- 12) **Final Plat Map.** Submit **ten (10)** copies of the final plat map prepared in conformity with Chapter 23, Subdivisions, within one year from the date of tentative approval, on or before **October 21, 2009**. If not, tentative approval to the revised preliminary plat map shall be deemed null and void. Only upon written request from the subdivider and for good cause, the director may grant to the subdivider an extension of time within which the subdivider may file the final plat. As part of final plat map submittal, the director request an additional copy of the final plat map be submitted as a ".dwg" or ".dxf" diskette file prepared by CAD software.
- 13) **Time Limit.** Subdivider shall complete all requirements specified as conditions for tentative approval of the revised preliminary plat map within three (3) years of said tentative approval, on or before **October 21, 2011**. An extension of not more than two (2) years may be granted by the director upon timely request of the subdivider.

Roy Hollowell, Project Manager/LPLS
M&E Pacific, Inc.
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October 21, 2008

Please be aware that if at any time during the fulfillment of the foregoing conditions, should concerns emerge such as environmental problems or other problems which were earlier overlooked or not anticipated/accounted for in data/reports available to date, this could be sufficient cause to immediately cease and desist from further activities on the proposed subdivision, pending resolution of the problems. The Planning Director shall confer with the listed officers to resolve the problems and notify you accordingly.

No final approval for recordation shall be granted until all the above conditions have been met.

Land shall not be offered for sale, lease or rent until final approval for recordation of the subdivision is granted by the Planning Director or the proposed subdivision has been issued a preliminary order of registration by the Department of Commerce and Consumer Affairs (DCCA) in accordance with the requirements of Chapter 484, Hawaii Revised Statutes.

There has been considerable legal controversy over subdivisions in the agricultural district, including the recent Kelly, et.al. v. 1250 Oceanside Partners, et.al., Civil No. 00-1-0192K. Because of the state of the law at this time, we recommend that subdividers in the State Land Use Agricultural district consult with, and rely on, independent legal counsel in deciding whether their subdivisions comply with the requirements of Chapter 205, Hawaii Revised Statutes. We also recommend that you advise lot purchasers to consult with, and to rely on, independent legal counsel regarding permissible uses and the effect of Land Use Commission Rule 15-15-25(b), Hawaii Revised Statutes Section 205-4.5, and Hawaii County Planning Department Rule No. 13, on the requirements to build and occupy dwellings on lots within the subdivision.

Should you have any questions, please feel free to contact Ed Cheplic of this department.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

ETC/DSA:lnm/dsa
P:\wp60\SUBDIV\Documents\Subc2008-4\SUB-07-000637\Kii\aeEstSmallLotsTA.doc

Enc.: Revised PPM (03-25-08)

Roy Hollowell, Project Manager/LPLS
M&E Pacific, Inc.
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October 21, 2008

xc: Manager, DWS
 Director, DPW
 District Environmental Health Program Chief, DOH
 District Engineer, DOT
 DPW-ENG-KONA
 State DLNR-Historic Preservation Division (Kapolei, Oahu)
 Ki'ilae Estates, LLC
 David Frankel, Esq.
 Steve Kornberg, Esq.
 Clarence Medeiros, Jr.
 Michael Moore, Esq.
 SUB 7459, FSA-SUB-03-000148



7459

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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Deputy Director

County of Hawaii
PLANNING DEPARTMENT
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April 8, 2008

Roy Hollowell, Project Manager/LPLS
M&E Pacific, Inc.
100 Pauahi Street, Suite 207
Hilo, HI 96720

Dear Mr. Hollowell:

REVISED PRELIMINARY PLAT MAP
SUBDIVIDER: KI'ILAE ESTATES, LLC
"Ki'ilae Small Lots"

Proposed Consolidation of Lots 18 Through 22, Inclusive, of Ki'ilae Farms Subdivision,
And Resubdivision Into Lots 51 through 72, Inclusive, and Roadway Lots 73 & 74,
Kauleoli 1st & 2nd, South Kona, Island of Hawai'i, Hawai'i
TMK: 8-5-005:Portion 019 (SUB-07-000637)

This is to acknowledge receipt of ten (10) copies of the revised preliminary plat map dated March 25, 2008, denoting a proposed 24-lot subdivision consisting of 22 lots each containing a minimum of 5 acres and two (2) roadway lots for the referenced application.

Under separate cover, we will refund \$25.00 of the per lot fee to the subdivider for one (1) less lot from the original request of proposed 25-lot subdivision.

By a copy of this letter, we are forwarding a copy of the revised preliminary plat map to the listed officers for their review. We shall contact you upon receipt of their response on this matter.

Should you have any questions, please feel free to contact Ed Cheplic of this department.

Sincerely,

CHRISTOPHER J. YUEN
Planning Director

ETC:lnm
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Roy Hollowell, Project Manager/LPLS
M&E Pacific, Inc.
Page 2
April 8, 2008

xc: Manager, DWS w/Revised PPM
 Director, DPW w/Revised PPM
 District Environmental Health Program Chief, DOH w/Revised PPM
 District Engineer, DOT w/Revised PPM
 Director, DEM w/Revised PPM
 DPW-ENG-KONA w/Revised PPM
 State DLNR-Historic Preservation Division (Hilo Office) w/Revised PPM
 Ki'ilae Estates, LLC
 David Frankel, Esq.
 Steve Kornberg, Esq.
 Clarence Medeiros, Jr.
 Michael Moore, Esq.
 M. Shimizu, Accountant I w/copy of Receipt #9034
 SUB 7459, FSA-SUB-03-000148