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Mayor



Christopher J. Yuen
Director

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Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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CERTIFIED MAIL

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April 21, 2003

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

PLANNED UNIT DEVELOPMENT APPLICATION (PUD 03-01)

Applicant: Gregory R. Mooers

Landowners: Dennis Alkire and David Knittle

Tax Map Key: (3) 8-2-003:032; Waipunaula, South Kona, Hawaii

After reviewing the information submitted with the Planned Unit Development Application, the Planning Director hereby approves Planned Unit Development (PUD) No. 67 to allow the development of a 3-lot agricultural subdivision and related improvements within the Agricultural-5 acre (A-5a) zoned district. Approval of PUD No. 67 includes the granting of Variances from the minimum lot size requirements of the Subdivision Code, Chapter 23 and minimum building site area requirements of the Zoning Code, Chapter 25, Hawaii County Code. The project site is located along an old Government Road situated on the makai (west) side of Napo'opo'o Road approximately 6,000 feet south from its intersection with the Mamalahoa Highway, Waipunaula, South Kona, Hawaii, Tax Map Key: 8-2-003: 032.

FINDINGS:

1. Dennis Alkire and David Knittle are the property owners who have authorized Gregory R. Mooers, as its authorized representative, to apply, execute and process this Application for Planned Unit Development related to the development of the real property described in this application.

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2. The subject property, consisting of 16.316 acres, is steeply sloping with an elevation of approximately 400 feet at its makai end to 950 feet at its mauka boundaries. The width of the property ranges from 295 feet at its mauka end to 593 feet along its makai boundary in sort of a "L-shaped" configuration.
3. In accordance with Section 25-5-72 of the Zoning Code, agricultural and related residential uses of the land within the proposed 3-lot subdivision will be permitted under the property's existing Agricultural (A-5a) zoning. The total land area of this PUD is 16.316 acres, which is sufficient land area to create a total of three, 5-acre parcels. The approval of this Planned Unit Development will allow the landowners to create two parcels with lot sizes below the minimum lot size of 5 acres as required by the Zoning Code. These smaller 2-acre sized lots will allow the landowners to create a 3-lot subdivision as allowed for by the Zoning and Subdivision Codes while providing sufficient land area within the 12-acre parcel to avoid creating a building site in close proximity to Pali o Manuahi. The landowners have indicated that a deed restriction will be incorporated to prohibit building within 100 feet from the top of Pali o Manuahi.
4. Each of the three parcels will have direct access to the Old Government Road via 15-foot wide access poles.
5. A draft Environmental Assessment for the proposed 3-lot subdivision was prepared and filed with the Office of Environmental Quality Control in October 2002. A Final Environmental Assessment and Finding of No Significant Impact was issued by the Planning Department and published in the February 8, 2003 edition of the OEQC Bulletin.
6. By letter dated October 31, 2002, the Planning Director declared the proposed 3-lot subdivision within the County's Special Management Area (SMA) exempt from the definition of "development" as provided for within Planning Commission Rule No. 9 regarding the SMA.
7. In accordance with requirements of Section 25-6-10(Criteria for granting a PUD):
 - a) **the construction on the project shall begin within a reasonable period of time from the date of full approval and shall be completed within a reasonable period of time.**

The applicant does not disclose the timeframe within which they plan to commence construction, but they are looking at the Planned Unit

Development process to shorten the amount of time necessary to create the three lots. Approval of the PUD will allow the applicant to adjust the parcels to areas that minimize grading upon the steep slopes of the property. Reducing the need for extensive grading will reduce the time and expense necessary to create the 3-lot subdivision.

b) the proposed development substantially conforms to the General Plan.

Currently, the site of this PUD Application is zoned Agricultural-5 acre (A-5a) and is consistent with General Plan's Land Use Pattern Allocation Guide (LUPAG) Map, which designates the project area for Orchards.

In addition, the following General Plan element goals, policies and standards of action are in conformance with the proposed Planned Unit Development:

ENVIRONMENTAL QUALITY

Maintain and, if feasible, improve the existing environmental quality of the island.

HISTORIC SITES

Protect and enhance the sites, buildings and objects of significant historical and cultural importance to Hawaii

NATURAL BEAUTY

Protect, preserve and enhance the quality of areas endowed with natural beauty, including the quality of coastal scenic resources. Protect scenic vistas and view planes from becoming obstructed. Maximize opportunities for present and future generations to appreciate and enjoy natural and scenic beauty.

HOUSING ELEMENT

Attain safe, sanitary and livable housing for the residents of the County of Hawaii. Attain a diversity of socioeconomic housing mix throughout the different parts of the County. Maintain a housing supply, which allows a variety of choice.

LAND USE ELEMENT

Designate and allocate land use in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County. Protect and preserve forest, water, natural and scientific reserves and open areas

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

The proposed Planned Unit Development will implement the above goals and policies of the applicable element of the General Plan, in particular with the above cited elements.

- c) **the proposed development shall constitute an environment of sustained desirability and stability, shall be in harmony with the character of the surrounding neighborhood and shall result in an intensity of land utilization no higher than, and standards of open space at least as high as permitted or as otherwise specified for the district in which this development occurs.**

The subject property and its immediately surrounding area are designated for agricultural uses by the Zoning Code. The property's current A-5a zoning would allow for the creation of 3 lots having a lot size of at least 5 acres. Approval of this PUD would result in the same number of parcels, three, with the primary difference being that two parcels will maintain a lot size as small as 2 acres. The minimum yards setbacks and maximum height limits for lots within the Agricultural district will be preserved.

- d) **the development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of the Zoning and Subdivision Codes, and that the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.**

Granting of the PUD to allow for a minimum lot size of less than the required 5 acres will allow the landowner to optimally configure the subdivision of the subject property due to its awkward dimensions and its proximity to a prominent pali, the Pali o Manuahi. Maintaining each lot at a minimum of 5 acres would require at least one of parcels to maintain most of its building

site along the sheer cliff and land immediately below. Building a home or other structure along the makai side of this cliff will be a visual blight along the face of this prominent cliff. By reducing two of the proposed lots to 2-acres, the landowner is able to configure the parcels and provide for building sites mauka of the Pali o Manuahi, and preserving its visual integrity.

In accordance with Section 25-6-6:

- the planning director may conditionally approve an application for a PUD.
- Any conditions imposed by the planning department upon approval of an application for PUD may include but are not limited to the time within which the project shall begin and be completed, changed boundaries of the project, uses permitted, specification of minimum development standards, specified street dedication and improvement, utilities to be furnished, and a list or limit of variances permitted.
- Any PUD, as approved, shall be subject to all conditions imposed and shall be excepted from other provisions of this chapter only to the extent specified in said approval.

Based on the above, the following list of variances are approved for this Planned Unit Development:

1. SUBDIVISION CODE:

- a. To allow the creation of two parcels within the proposed 3-lot subdivision having minimum lot sizes of two (2) acres within the Agricultural-5 acre (A-5a) zoned district, a Variance from the minimum requirements of Section 23-33(a) regarding "Minimum lot sizes" is hereby granted.

2. ZONING CODE

- a. To allow the creation of two parcels within the proposed 3-lot subdivision having minimum lot sizes of two (2) acres within the Agricultural-5 acre (A-5a) zoned district, a Variance from the minimum requirements of Section 25-5-74 regarding "Minimum building site area" is hereby granted.

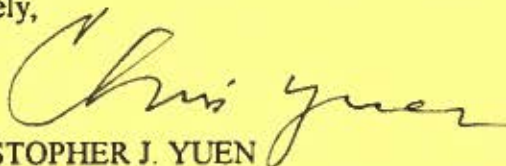
The Planning Director approves Planned Unit Development Permit No. 67 subject to the following conditions:

- A. The applicant, its successors or assigns be responsible for complying with all of the stated conditions of approval.
- B. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
- C. The applicant shall secure final subdivision approval within 5 years from the effective date of the PUD, except as otherwise conditioned.
- D. Plans submitted for subdivision review shall be generally consistent with the Planned Unit Development plans dated January 14, 2003 and, in addition, shall indicate the approximately location of a building pad on each of the three parcels consistent with the building pad locations illustrated in the Final Environmental Assessment-Appendix 5, Figure 3. Plans shall also accurately locate the top of Pali o Manuahi and clearly indicate a 100-foot wide building setback line from the top and northeast (mauka) of this pali. That portion of the project site located southwest (makai) of this 100-foot wide building setback line shall be clearly label "AREA NOT APPROVED FOR BUILDING CONSTRUCTION".
- E. Restrictive covenant in the deeds of all parcels shall state two notification: 1) it shall prohibit the construction of any buildings on the face and steep escarpment of Pali o Manuahi and 2) all building construction shall be limited to the building envelopes illustrated in the Final Environmental Assessment-Appendix 5, Figure 3.
- F. Proposed Lot 1-B-3 shall include an additional restrictive covenant identifying the 100-foot wide building setback from the top of Pali o Manuahi to the wall of any structure, and providing a maximum 6-foot open projection into this 100-foot wide building setback.
- G. The restrictive covenants required by Conditions E and F shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. These restrictive covenants shall be immediately recorded disclosed to all potential buyers of these parcels.

- H. Access to the individual parcels from Napoopoo Road shall meet with the requirements of the Subdivision Code and the Department of Public Works, unless a Variance from the minimum requirements of the Subdivision Code is granted by the Planning Director.
- I. The landowner shall install a 4-inch waterline in the "Old Government Main Road" from the existing 8-inch waterline located within the "Lower Government Main Road" to the frontages of each of the proposed lots, including the installation of service laterals, prior to the issuance of Final Subdivision Approval.
- J. Should any 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 mitigative measures have been taken.
- K. The applicant shall comply with all other applicable rules, regulations and requirements.
- L. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the Planned Unit Development (PUD) 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.
- M. If the applicant should require an extension of time, the applicant may request for time extension pursuant to Section 25-6-14 (Time extensions and amendments).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate the nullification of Planned Unit Development Permit No. 67

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

Mr. Gregory R. Mooers
April 21, 2003
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xc: Department of Public Works, Building Division
Department of Public Works, Engineering
Department of Water Supply
Subdivision Section
West Hawaii Planning Office