

Harry Kim
Mayor



Christopher J. Yuen
Director
Brad Kurokawa, ASLA, LEED™ AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

September 8, 2006

Mr. Michael J. Rhiem, A.I.A.
Riehm Owensby Planners Architects
P.O. Box 390747
Kailua-Kona, HI 96739

Dear Mr. Rhiem:

SUBJECT: Denial of Planned Unit Development Permit Application No. 06-000004
Applicant: Riehm Owensby Planners Architects
Landowner: CGH, LLC
Project: "Coffee Grounds Two"
TMK: 7-5-014:001,009, Exclusion 2,011; Waiaha 2nd & Kahului 2nd North
Kona

After reviewing the information submitted with the subject Planned Unit Development (PUD) Application, the Planning Director hereby denies the applicant's request for a PUD Permit to allow for the development of a 40-lot agricultural subdivision on approximately 131.663 acres of land. This denial is based on drainage concerns within the affected area and the need to resolve these concerns through comprehensive drainage studies, before a determination can be made regarding this PUD application. The reasons for this denial are discussed in further detail below.

The subject properties (hereinafter referred to as "Property"), consisting of four individual parcels which have a combined land area of 131.663 acres, are located in Waiaha 2nd and Kahului 2nd, within the district of North Kona. The Property is situated within the State Land Use Agricultural District and currently designated as Intensive Agricultural Lands by the County General Plan. The County zoning designation for the entire Property consists of a roughly 1,000-foot wide band of land along the mauka side of the Mamalahoa Highway zoned Agricultural-1 acre (A-1a), with the remainder of the Property zoned Agricultural-5 acres (A-5a).

PROJECT OBJECTIVES AND DESCRIPTION

The objectives for "Coffee Grounds Two" ("Project") include the following:

According to the Applicant "The plan is to subdivide the farm into 40 agricultural lots sensitively placed among the coffee trees so as to have as little impact as possible on the existing agricultural operation and local rural character. Any mature coffee trees affected by any future buildings on the lots will be relocated to other unused areas of the farm thereby reducing the impact on overall production." The size of the lots within this proposed subdivision range from 1-acre to approximately 7.93 acres.

"The propose CC&R's for Coffee Grounds 'Two' state that the intent of the project will be to integrate agricultural uses and farm dwellings in a compatible mix of uses that takes advantage of the unique characteristics of the land and that the project is not intended to be a luxury residential development, where agricultural uses merely enhance the beauty. The proposed CC&R's will encourage maintenance of the existing coffee farm on both the common coffee areas and the agricultural easements to be dedicated on each lot within the project and will specifically state that the CC&R's will not restrict any permitted agricultural uses and activities on the agricultural lands within the project."

REQUESTED VARIANCES FROM MINIMUM REQUIREMENTS OF ZONING & SUBDIVISION CODES

The Applicant has requested a total of 24 individual variances from the requirements of the Zoning and Subdivision Codes. These requested variances are primarily concentrated upon:

1. minimum lot dimension and configuration requirements;
2. minimum yard setbacks;
3. minimum right-of-way and pavement widths;
4. minimum design requirements for roadways; and
5. street lighting and traffic signage requirements.

PHYSICAL CHARACTERISTICS OF PROPERTY

1. Drainage: According to the Applicant, an "Erosion Control and Mitigation Report" was prepared by Witcher Engineering LLP on September 9, 2002. *"The report was to quantify the amount of runoff from the coffee farm and compare it with the condition before the property was placed into cultivation. The report proposed various modifications to deal with the drainage issues at hand and in conclusion stated 'Much of the work already performed*

on the farm is adequate to meet the demands of a 25 year event. With the minimal modifications which are proposed in this project, the whole property will meet the necessary requirements'." Drainage from the project will be controlled on-site through a series of catchment ponds and/or other drainage devices located as required to comply with all applicable county standards.

2. North Kona Flood Plain Management Study (Dec 1984): This study was developed to provide the state and county governments with the basic hydrologic and hydraulic data concerning the flooding problems and possible alternatives in the rapidly growing North Kona area, within which the Property resides. Portions of the Property are clearly within the Waiaha Drainage way, containing areas subject to the 100-year frequency flood.
3. Slope: The subject property has an average slope of about 16 percent.

PUBLIC COMMENTS

1. Thomas and Allea Langenstein have resided for over 20 years on lands that are situated adjacent to and makai of the Property. Expressed concern that approval of the PUD Permit will increase density, overload infrastructure and pose a great flood risk to those who live in the proposed subdivision and areas below, among other concerns. Feels that there is insufficient justification for approving the numerous variances being requested. The number of water commitments and the lack of restrictions on ohana dwellings, workers quarters, etc. could indicate that the possible unit density could exceed the number of units represented in the application. States that this PUD application preempts the community-based regional planning process that is currently in its infancy. Need for proper floodplain management employing public/private partnership. Requests that variances from minimum lot size, building site average width, street grades, curves, curbs, minimum pavement width and rights-of-ways be denied.

Further mentions that the county has not facilitated flood studies that the community requested a long time ago. States that the developer does not know how to accurately identify and mitigate flood problems already occurring in the area. States that the 2002 Witcher Erosion Control and Mitigation Report is not consistent with experiences by residents. PUD application does not mention specific mitigation measures planned for water runoff without accurate flood study maps. Steep roads increase flood hazard and runoff.

Recommends that County must accurately identify floodwater pathways and provide incentives to large property owners to participate in best management practices regarding flood path and flood plain management. Feels that approving this PUD under current conditions is the opposite of doing property floodplain management.

2. Carl J. Merner resides directly makai of the Property. Believe that landowners should have the right to do what they want with their own land, and feels that the proposed subdivision seems to be feasible. But his number one concern is traffic. Accidents constantly occur in front of his house, and with 40 new houses and at least 80-plus cars making two or three trips per day, he fears for his safety and the safety of others. The Mamalahoa Highway has been a backup for the times when Queen Kaahumanu Highway is closed, funneling all traffic from town to Holualoa. Mr. Merner expresses concerns regarding the proposed density, which did not calculate the land area typically dedicated to roads and if applied to this subdivision, would equate to approximately 25 lots instead of 40. Also questions about water being made available to each lot and flooding concerns due to additional construction on Property. Recommends that developer conform to county guidelines and zoning regulations and participate in funding improvements dedicated solely for the Mamalahoa Highway.
3. Bennett Ohta protests the application. Recalls an October 18, 1999 call to inspectors in Kailua to complain about extreme flooding in his area because of development above his residence. Inspectors told him that they would look into problem and he had to call several more times in November and December. When the "big rain" came, it flooded his neighbors' properties as well as his property. When he moved into his new home on February 1, 2000, his garage was flooded with 6 inches of water and mud and his driveway was damaged. He was never compensated for the damage.
4. Lynn Langenstein expressed her concern regarding flooding in this area due to the steep terrain and unexpected heavy rains, which pose a danger to those located makai during the construction phase of this proposed Project. The long term drainage of roads and large rooftops will potentially change the effects of runoff to areas below. Also expressed concerns regarding the Mamalahoa Highway from Palani to Honalo, a dangerous road with no shoulders. Traffic has increased tremendously every weekday from 4 to 7pm. There is no room for a pedestrian and two cars, and there are several areas where the pavement has deteriorated on the inside of the white line. Recommends that no increase in density be permitted until shoulders are added along the entire stretch. Recommends denial of this subdivision.
5. Nellie M. Reed & Kelly Kurashige stated that they are not in favor of the "proposed increase in housing and vehicular density" because of the likelihood of increased water runoff onto the Mamalahoa Highway and into the unnamed stream that runs through the center of the proposed development. When parcel was initially graded and planted with coffee, there was increased runoff over the highway and onto their property and the adjacent property. The increase in residences will probably increase vehicle density by at a factor of 2, or 80 vehicles. The Mamalahoa Highway is not designed to handle the current high increase in traffic and additional vehicles will create more safety problems and require more "unbudgeted" repairs and upgrades.

6. Mark Van Pernis resides on property located to the south of the Property, and indicates that it floods dramatically with every major storm (e.g. 1 year storms, 5-year storms). Runoff from Property crosses Mamalahoa Highway and onto makai properties. Notes several places within the area where major flood water runs, and this is just one such place. The grading and development of mauka lands such as Hualalai Farms subdivision and unsurveyed changes further up Hualalai ad the most likely cause of these water runoff concentration problems. Development makai of the Mamalahoa Highway has greatly compounded the problem, without an overall water runoff control plan. Recommends no development in the area until an overall flood study of area from mauka Honokohau to Holualoa is conducted to determine how to safely control Hualalai water runoff and direct it to the sea. Also expresses concern regarding the overcrowded and unsafe conditions along the Mamalahoa Highway, during morning school traffic. The afternoons also have school traffic as well as commuters trying to avoid the congested Queen Kaahumanu and Kuakini Highways. Traffic along Hualalai Road and Palani Road should also be considered and addressed.
7. Bruce and Lisa Corker expressed concerns about damage to the historic character of the Kona Coffee Belt corridor by permitting 18 one-acre lots in what is an agricultural area along the Mamalahoa Highway. Primarily concerned about increased water runoff and flooding if this PUD is approved. After grading of Property and planting of coffee, there has been considerable increase in runoff across the highway and onto properties located to the north of their property. County installed a culvert under the highway to divert runoff into an unnamed stream. During past 5 years, this stream regularly fills up and over its banks during storms, and on one occasion flooding caused damage to our coffee orchard. States that proposed development would significantly increase runoff into this stream and its banks will not be able to contain the increased runoff. Mentions that to approve this PUD would be negligent in the absence of an independent professional study of risks to down slope properties and possible mitigative measures.
8. Kenneth Sugiyama, Norman Nakamoto, Yoshimi Taniyama expresses concerns regarding the proposed Project due to increased flood potential and vehicular traffic along Mamalahoa Highway. When Property developed for coffee plantings, the highway was flooded as well as properties below the highway far beyond 300 yards to the north and south. Traffic along the highway from Palani Junction to the south is already congested due to commuters avoiding Queen Kaahumanu and Kuakini Highways.
9. Randy Mori explained that he is not against subdivision projects, but when such projects attempt to "skirt around existing rules at the expense of the neighboring property owners and the new owners to come, [he] feels the project should not be allowed to be built." Recommends that a number of the requested variances be denied primarily due to safety, potential flooding, water runoff and traffic congestion. Mr. Mori lives across the street and has experienced water and mud flowing down to his property. Feels the drainage study is flawed and that grading and mitigative measures do not adequately address flooding and

water runoff. Due to flooding potential, he recommends denial of variances from flag lot requirements, minimum building site area, minimum yards and widths. Due to steepness of terrain, grading required for housepads in the 1-acre lots will destroy most of the coffee trees and in turn, increase the likelihood of flooding. Recommends variances that allow use of existing roads be denied since these roads are not engineered or constructed to county standards. Finally, increase in traffic along Mamalahoa Highway due to early morning and afternoon traffic jams in Kailua. Project should not be permitted unless intersection improvements are required, a left turn lane at the very least.

10. Tomoe Nimori resides within a short distance of Property and has submitted testimony and pictures of flooding along this section of the Mamalahoa Highway. In 1997, indiscriminate land clearing in the mauka lands severely eroded the top soil on their farm. Concerned about PUD variance to permit 1-acre sized lots in lieu of 5-acre lots, which represents a 5-fold increase in the number of structures and vehicles associated with each structure. Also concerned about variance to utilize existing access road without meeting county roadway standards. Ask that Planning Department consider the flooding issues associated with these two variance requests. Noted a report by Marion Kelly called Na Mala O Kona (Gardens of Kona) that describes this entire area from Honokohau to Hookena as part of the Kona Field System which is listed on the Hawaii Register of Historic Places and nominated to the National Register. Notes that palm trees planted by Queen Emma near the southeastern end of the Property are historically significant. Asks that these palm trees be preserved by the applicant by having them registered with the Arborist Committee. Also recommends an archaeological survey of this Property that could reveal remnants of the Kona Field System and Queen Emma's summer home, which was located near the southeastern end of this Property.
11. Arthur Murata expressed his concern that the proposed 40 homes will increase the potential for flooding and vehicular traffic along the Mamalahoa Highway. When someone last developed mauka of his property, the first big rain caused his properties to be flooded with extensive top soil erosion and water damage to his house and garage.
12. George and Asano Matsumoto; Matsuko, Bert, Wailan, Kay & Anginette Onaka expresses concerns regarding the proposed Project due to increased flood potential and vehicular traffic along Mamalahoa Highway. When Property developed for coffee plantings, the highway was flooded as well as properties below the highway far beyond 300 yards to the north and south. Traffic along the highway from Palani Junction to the south is already congested due to commuters avoiding Queen Kaahumanu and Kuakini Highways.
13. Colin and Lorianne Onaka are opposed to the proposed Project. The Property has caused lots of problems for residents in the immediate area. Illegal grading and grubbing on this Property has caused the flooding of homes and ongoing flooding of the highway. County installed drywells, but when there is a big rain, there is standing water on the highway which

is a hazard to motorists. Traffic is a huge problem in the area, and allowing additional homes will just add to the existing road hazards.

14. Nelson Kunitake detailed his experiences with flooding of their lands during heavy rainfall. Soils in this area are highly subject to erosion and explains how runoff travels or percolates through the soil structure within the area. He also detailed his efforts to work with the County to get this drainage problems corrected, apparently without much success. Noted that Waiaha Stream resides in both Coffee Grounds 1 and 2. Note relatively light rainfall since 1983, but it is not "if" we are going to have floods, it's just a matter of "when". Mentioned that roads that developer constructed may have portions with adequate base course, other areas were just graded and paved. Concerned that drainage during the construction of these roads were not addressed. Also concerned about the smaller one-acre sized lots. Homeowners on these properties may excavate into the hillside, and questions where water will go during a heavy rain. Does not oppose the proposed subdivision, but wants County grading ordinance revised and enforced.

AGENCY COMMENTS RELATING TO DRAINAGE:

1. Department of Public Works – memorandum dated June 28, 2006
 - “1. Flood Zone ‘AE’, affects the parcels as designated by the Flood Insurance Rate Map (FIRM), dated September 18, 1988. Any alterations, new construction or substantial improvements within the AE Zone will subject to the requirements of Chapter 27 – Flood Control, of the Hawaii County Code. Prior to the alteration of the flood zone, the applicant may be required by DPW to submit a flood study prepared by a licensed professional civic engineer for review and approval. If required by DPW, the flood study shall be submitted to the Federal Emergency Management Agency (FEMA) for a Letter of Map Change (LOMC). A Letter of Map Revision may be required upon completion of the alterations.
 2. The proposed cross sections lack drainage swales. We question how roadway and lot drainage will be addressed. It appears that lot and roadway drainage is designed to flow across property lines and from the roadways into the lots. If so, a deed covenant should be required which prohibits alteration of the system by construction of roadside berms and walls with potential to concentrate and divert drainage without proper mitigation of adverse impacts as recommended by a licensed civil engineer. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage report shall be submitted with construction plans to substantiate how developed lot and roadway runoff is being

disposed of within drainage structures and easements on site. Final construction approval will require complete stabilization of the roadsides and drainage system.

3. Uncontrolled runoff on and from the subject property onto Mamalahoa Highway and other properties has occurred according to records dating to 1999. A study was subsequently submitted to DPW in 2002 proposing drainage improvements. A check of our records indicates that DPW had questions on the report and no grading permit was issued to implement the proposed improvements.”

FINDINGS

The denial of this PUD application is based on a finding that approval of this request will not conform to several of the criteria required for approval of a PUD Permit as specified by Section 25-6-10 of the Zoning Code.

1) The proposed development does not substantially conform to the General Plan.

Approval of this PUD application will **not** be consistent with the following policies and course of action of the General Plan.

- (a) Any development within the Federal Emergency Management Agency designated flood plain must be in compliance with Chapter 27.
- (b) Development-generated runoff shall be disposed of in a manner acceptable to the Department of Public Works and in compliance with all State and Federal laws.
- (c) Develop a comprehensive program for the coordinated construction of a drainage network along a single drainage system.
- (d) Develop drainage master plans from a watershed perspective that considers nonstructural alternatives, minimizes channelization, protects wetlands that serve drainage functions, coordinates the regulation of construction and agricultural operation, and encourages the establishment of floodplains as public green ways.
- (e) Where applicable, natural drainage channels shall be improved to increase their capacity with special consideration for the practices of proper soil conservation, and grassland and forestry management.
- (f) Consider natural hazards in all land use planning and permitting.

Approval of this PUD will also not be in conformance with the following courses of action for the North Kona district as specified by the General Plan:

- (c) Encourage the mapping of the floodways in North Kona to develop more effective flood control programs.

- (d) Encourage the use of natural drainage ways as greenways in the development of the region.

A more comprehensive flood study of the surrounding area is needed to further refine and define the extent and limits of the Waiaha Drainage way. The Property is situated within the upper limits of The North Kona Flood Plain Management Study which provides basic technical data on these flood areas. But residents in the area and the Department of Public Works have identified past flooding events that have affected the Mamalahoa Highway fronting the subject Property

An erosion control and mitigation report of the Property was submitted to the DPW in 2002 to address the uncontrolled runoff from the Property onto the Mamalahoa Highway. However, there is no record that indicates that this report was ever approved by the DPW or that approved mitigations measures were ever properly implemented on the subject Property. While this plan attempts to address erosion and drainage concerns as it affects the subject Property, it does not provide for the comprehensive design and implementation of a drainage network within the particular area of North Kona which is specified as a course of action by the General Plan. Dealing with the flooding problems will require a coordinate approach by both the public and private sectors. Approving the PUD at this time in advance of any comprehensive drainage study would be premature since the County would be giving its blessing to the design of a particular subdivision concept in the absence of a clear understanding of the drainage problems within the area and the proper mitigating measures required, which could have a significant affect upon the design of a proposed subdivision and its drainage structures.

- 2) **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.**

While the proposed 26-lot subdivision does not exceed the maximum permitted density for this particular area as established by its current A-1a and A-5a zoned district classification, the department cannot conclude that approval of this PUD will constitute an environment of sustained desirability and stability. The subject area clearly has been adversely affected by past flooding events. The Waiaha Drainage way is a major floodway that is situated within the Property. What happens on this Property will have an effect upon landowners' located down-gradient, or makai, of the Property. Only through the development of a comprehensive

drainage study for the area can we determine the cause and effect of development upon this major drainage way.

- 4) **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.**

For similar reasons as mentioned above, we cannot conclude that the proposed 26-lot subdivision, as proposed under this PUD application, represents a harmonious and integrate whole that justifies the exceptions to code requirements that are being requested. The requested deviations from the minimum required lot specifications, roadway improvements and geometrics will all be affected depending upon the effect this project may have upon the Waiaha Drainage way, and visa versa. Not knowing the possible implications of required drainage mitigations measures upon this proposed subdivision makes it impossible for this office to declare that the proposed development will be harmoniously integrated within surrounding community, a community that has historically suffered from flooding events.

For the reasons as detailed above, we hereby deny Planned Unit Development Permit Application No. 06-000003.

Appeal: In accordance with Article 6, Division 1 of the Zoning Code regarding Planned Unit Development (PUD), any person aggrieved by my decision in the denial of this PUD Permit may, within thirty (30) days after my decision, appeal this decision to the Board of Appeals in accordance with its Rules of Practice and Procedure and accompanied by a filing fee of \$250.00.

Pursuant to Board of Appeal (BOA) Rules of Practice and Procedure, Part 8. (Appeals), Section 8-15 regarding General Standards for Appeals (Non-Zoning):

“A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.”

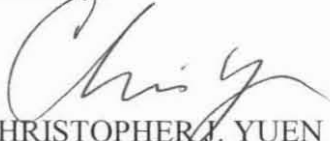
Mr. Michael J. Rhiem, A.I.A.
Riehm Owensby Planners Architects
Page 11
September 8, 2006

Should an appeal of my decision be contemplated, please contact this office for the proper form by writing to us at:

County of Hawaii Planning Department
Aupuni Center
101 Pauahi Street, Suite No. 3
Hilo, Hawaii 96720

The proper form for filing of an appeal is also available at our website (<http://www.co.hawaii.hi.us/forms/planforms.html>). Look for the form entitled, "BOA Planning Director", which is available for download in both MSWord and .PDF formats.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

DSA:ld

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xc: Department of Public Works, Engineering (Hilo and Kona)
Department of Water Supply
Department of Environmental Management
West Hawaii Planning Office