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County of Hawai'i

LEEWARD PLANNING COMMISSION

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January 13, 2025

Daryn Arai
Land Use Planning Consultant
P.O. Box 4501
Hilo, HI 96720
VIA EMAIL

Dear Daryn Arai:

SUBJECT: Planned Unit Development Permit Application (PL-PUD-2024-000003)
Applicant: Kula Nei Partners, LLC
Permitted Use: To Develop an 8-Lot Agricultural Cluster Subdivision and Cultural Heritage Area
Tax Map Key: (3) 7-3-007:039, 'O'oma 1st and 2nd, North Kona, Hawai'i

The Leeward Planning Commission, at its duly held public hearing on December 19, 2024, voted to approve the above-referenced request to allow for an 8-lot agricultural subdivision, and a cultural heritage area for 40.421 acres of land. The PUD would allow various exceptions from Chapter 25 (Zoning) of the Hawai'i County Code. The subject property is located on Kukuna Street, directly south of its intersection of Punawele Street within the Kona Acres Subdivision, O'oma 1st – Kohanaiki, North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant(s), its successor(s), or assign(s) ("applicant") shall be responsible for complying with all the stated conditions of approval.
2. The proposed PUD shall be developed in a manner that is substantially representative of the plans and details contained within the PUD application received on September 22, 2024, any supplemental material, and representations made before the Leeward Planning Commission.

3. Final Subdivision Approval for the entire project shall be secured within five (5) years from the approval date of this permit.
4. As represented by the applicant, the proposed 50-foot-wide access road right-of-way shall extend the entire length of the subject property from Kukuna Street to the southern property line adjacent to the homestead road. This private roadway will be constructed to County-non-dedicable agricultural standards (Department of Public Works Standard Detail R-25) to a point at least 50 feet beyond the common boundary of proposed Lots 56-A-3 and 56-A-4 to ensure adequate access for all proposed lots.
5. The construction of residential structures on the proposed bulk lot for archaeological and cultural preservation purposes shall be prohibited.
6. Prior to receipt of Final Subdivision Approval, the applicant shall submit an executed conservation/preservation easement, a copy of draft restrictive covenants against property deeds, or a similar mechanism to ensure the creation, preservation, and management of the proposed bulk lot for archaeological and cultural preservation purposes is consistent with representations made by the applicant. The restrictive covenants shall be recorded at the Hawai‘i Bureau of Conveyances against property deed(s) and shall be submitted to the Planning Department upon recordation.
7. Prior to the issuance of any land alteration permits and no later than the issuance of Final Subdivision Approval, the applicant shall complete the requirements of the “*Burial Site Component of a Preservation Plan, Site #50-10-28-24768, ‘O‘oma 2nd Ahupua‘a, North Kona District, Island of Hawai‘i, TMK: (3)7-3-007:039*” accepted by SHPD letter dated December 10, 2019 or any amendments thereto. Evidence of such completion shall be provided to the Planning Department.
8. Prior to the issuance of any land alteration permits and no later than the issuance of Final Subdivision Approval, the applicant shall complete all immediate, short-term, and applicable long-term conservation requirements, of the “*Archaeological Preservation Plan, Site #50-10-28-24774, ‘O‘oma 2nd Ahupua‘a, North Kona District, Island of Hawai‘i, TMK: (3)7-3-007:039*” accepted by SHPD letter dated June 8, 2016 or any amendments thereto. A copy of the restrictive covenants against property deeds shall be submitted to the Planning Department upon recordation with the Hawai‘i Bureau of Conveyances.
9. Prior to the issuance of any land alteration permits and no later than the issuance of Final Subdivision Approval, the applicant shall complete all short-term, and

applicable long-term conservation requirements, of the report entitled, “*An Archaeological Preservation Plan for Sites 50-10-28-24762, 24764, 24773, and 24776, ‘O‘oma 2nd Ahupua‘a, North Kona District, Island of Hawai‘i, TMK: (3)7-3-007:039*” accepted by SHPD letter dated September 14, 2021 or any amendments thereto. A copy of the restrictive covenants against property deeds shall be submitted to the Planning Department upon recordation with the Hawai‘i Bureau of Conveyances.

10. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
11. An initial extension of time for the performance of conditions within this amended permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - B. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.
 - C. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

If the applicant should require an additional extension of time, the Planning Department shall submit the applicant’s request to the Planning Commission for appropriate action.

12. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke this PUD permit.

Daryn Arai
Land Use Planning Consultant
January 13, 2025
Page 4

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.

Approval of this request is based on the reasons given in the enclosed Findings Report.

Should you have any questions, please contact Christian Kay of this department at (808) 961-8136 or by email at Christian.Kay@hawaiicounty.gov.

Sincerely,

Barbara DeFranco
Barbara DeFranco (Jan 13, 2025 14:42 HST)

Barbara DeFranco, Chairperson
Leeward Planning Commission

KulaNeiPartnersLicPL-PUD-2024-000003lpc

Enclosure: Planning Commission Findings Report

cc via email w/Enclosure: Robert E. Lee Jr., Kula Nei Partners, LLC
Department of Public Works
Leeward Planning Commission
Jean Campbell, Esq., Deputy Corporation Counsel
Suzanna Tiapula, Esq., Deputy Corporation Counsel
GIS Section

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

KULA NEI PARTNERS, LLC.

PLANNED UNIT DEVELOPMENT APPLICATION (PL-PUD-2024-000003)

Based on the following findings, **the request for a PUD permit to allow exceptions from Chapter 25 (Zoning Code) Hawai‘i County Code for the development of an 8-lot, agricultural subdivision, and a cultural heritage area for 40.421 acres of land is hereby approved by the Planning Commission.** The subject property is located on Kukuna Street, directly south of its intersection of Punawele Street within the Kona Acres Subdivision, ‘O‘oma 1st – Kohanaiki, North Kona, Hawai‘i, TMK: (3) 7-3-007:039.

The applicant is requesting a Planned Unit Development (PUD) permit to allow for the following exemptions from the Zoning Code to facilitate the development of an 8-lot, agricultural subdivision, and a bulk cultural and archaeological preservation lot on 40.421 acres of land.

Exceptions Requested from Zoning Code (HCC Chapter 25)

- **Minimum Street Frontage (HCC §25-4-30).** Request to waive minimum street frontage requirements to allow a minimum roadway frontage of 140 feet for each proposed habitable lot in lieu of the minimum 200 feet of roadway frontage based on existing Agricultural-5 acre (A-5a) zoning. This is consistent with minimum roadway frontage for an FA-2a zoning district as each proposed habitable lot will be no less than 2 acres in size. Additionally, the applicant requests the allowance of a minimum roadway frontage of 15 feet (minimum width for access pole) for the proposed cultural and archaeological preservation lot, which will not be habitable. This lot will have direct access to the proposed private subdivision roadway (see PUD application Figure 3 – PUD Concept Master Plan).
- **Minimum Building Site Area; Minimum Average Width (HCC §25-4-31).** Request to waive minimum building site area requirements to allow a minimum building site area of 2-acres within the existing A-5a zoning district. Additionally, request to allow the minimum building site area average width to be 140 feet instead of the 200 feet required within the existing A-5a zoning district (see PUD application Figure 3 – PUD Concept Master Plan).
- **Reduction of Building Site Below Minimum Area (HCC §25-4-32).** Request to reduce building sites to a minimum of 2 acres in lieu of the 5-acre minimum lot size required by the existing A-5a zoning district (see PUD application Figure 3 – PUD Concept Master Plan).
- **Minimum Building Site Area (HCC §25-5-74).** Request to waive requirement that the minimum building site area in the Agricultural zoning district be a minimum of 5 acres to allow for building site areas to be a minimum of 2 acres.
- **Minimum Building Site Average Width (HCC §25-5-75).** Request to allow the minimum building site area average width of 140 feet instead of the 200 feet required by the existing A-5a zoning district.

The preceding exceptions will facilitate the development of an 8-lot, agricultural subdivision with lot sizes ranging from a minimum of 2 acres to a maximum of around 5 acres to allow the construction of small farms and associated farm dwellings. Additionally, the applicant proposes to create a bulk lot for cultural and archaeological preservation purposes, anticipated to be just under 14 acres in size, with no habitable structures to be permitted.

The proposed preservation lot will include archaeological features slated for preservation by the State Historic Preservation Division (SHPD) and associated preservation buffers. Areas not affected by any archaeological preservation buffer will be used as a nursery for the propagation of native Hawaiian indigenous and endemic plants for landscaping throughout the proposed subdivision as well as for commercial purposes. Minor agricultural structures, such as storage sheds and greenhouses, may be established on this bulk preservation lot to support operations solely related to the nursery and maintenance of the archaeological preservation sites.

The applicant also proposes to construct a private roadway to non-dedicable agricultural standards (DPW Standard Detail R-25) that will be paved to a point at least 50 feet beyond the common boundary of Lot 56-A-3 and 56-A-4 to ensure adequate access for all proposed lots. Furthermore, the road right-of-way will extend through the entire length of the subject property to the southern property boundary just north of the adjacent homestead road to provide for future interconnection opportunities between properties. The applicant will ensure that proper rights of access and utility over this non-dedicable agricultural road will be granted in favor of Parcel 038. The preceding will be added as a condition of approval.

County Water is available to support to proposed subdivision and the applicant will be required to construct water system improvements meeting with the requirements of the Department of Water Supply (DWS) prior to receipt of final subdivision approval. Sewage disposal will be handled by individual wastewater systems meeting with the requirements of the State Department of Health during the building permit process for dwellings on the resulting lots. Finally, as part of the subdivision process, the applicant will be compelled to comply with County and State requirements related to grading and grubbing, and stormwater management/drainage and runoff.

According to the applicant, the purpose for the requested PUD permit is to promote the development of an 8-lot agricultural subdivision, consisting of lot sizes ranging from 2 to 5 acres, that avoids the many significant cultural and archaeological sites that exist within the subject property. Through the PUD permit application, the applicant is requesting relief from the minimum 5-acre minimum lot size requirements and the minimum building site average width and related requirements of the Zoning Code in order to properly configure the proposed 8-lot agricultural subdivision along with a bulk lot that will be encumbered with a preservation easement and held by a single 501(c)(3) organization (Mālama O Kekaha, established in November 2023) that will ensure the protection and proper management of the important cultural and archaeological features identified within the subject property. A condition of approval will require the applicant to ensure preservation and management of the proposed bulk archaeological and cultural preserve lot through a conservation easement, deed restrictions, or other similar mechanism.

Additionally, one of the primary benefits of the proposed smaller lot sizes is to create more affordable agricultural homestead opportunities for local families. The applicant values the tradition of multigenerational living, which has been a longstanding practice in their family, spanning from great-grandparents to great-grandchildren. This deeply rooted cultural tradition has shaped their vision for Kula Nei. With this in mind, the applicant intends for each buildable lot within the development to accommodate a second (additional) farm dwelling, provided there is sufficient water availability and adequate space for a compliant wastewater disposal system.

The purpose of a PUD is to encourage comprehensive site planning that is compatible with the surrounding community and that adapts the design of development to the land, by

allowing diversification in the relationships of various uses, buildings, structures, open spaces, and yards, building heights, and lot sizes in planned building groups, while still ensuring that the intent of the Zoning Code is observed.

The criteria for granting a PUD permit are found in Rule 16-9 in the Planning Commission Rules of Practice and Procedure and are discussed, as applicable, in further detail below:

The construction of the project can begin and be completed within a reasonable period of time from the date of approval. Should the PUD Permit be approved by the end of 2024, the applicant intends to promptly file a subdivision application with the Planning Department. Anticipated completion of the proposed 8-lot subdivision is expected within 5 years from the date of approval of the PUD Permit, or by the end of 2029. The Director deems this to be a reasonable period of time, and the 5-year performance period will be added as a condition of approval.

The proposed development substantially conforms to the General Plan, any adopted community development plan or adopted master plan and, if applicable, any adopted design guidelines and/ or standards affecting the project area. The General Plan is intended to be used as a policy guide for the coordinated growth and development of all sectors of the County. It sets forth goals, policies, standards, and courses of action to accommodate growth without congestion, to designate and preserve the lands needed for residential use, commercial and visitor services, industry, agriculture, and open space, and to coordinate these uses with the County's service and circulation systems. The overall goals, policies and standards are set forth to physically plan the lands in the County in the best interest of the island's residents.

Land use is one of the principal focal points of public concern and policy. The Land Use Element provides the primary basis for direct control and guidance of publicly and privately-owned resources. The proposed change of zone will be consistent with the following goals, policies, standards, and courses of action related to the Land Use and Historic Sites Elements of the General Plan:

- *Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.*
- *Encourage the use of more innovative types of housing development, such as zones of mix and cluster and planned unit developments.*
- *Rural-style residential-agricultural developments, such as new small scale rural communities or extensions of existing rural communities, shall be encouraged in appropriate locations.*
- *Protect, restore, and enhance the sites, buildings, and objects of significant historical and cultural importance to Hawai'i.*
- *Require both public and private developers of land to provide historical and archaeological surveys and cultural assessments, where appropriate, prior to the clearing or development of land when there are indications that the land under consideration has historical significance.*

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County.

The subject property is designated Low Density Urban (ldu), which allows residential use, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre. While the density proposed by the requested PUD is much lower than what is allowed in the ldu, the applicant is not requesting an upzone to the property and could currently apply for a conventional 8-lot subdivision based on the existing A-5a zoning and the proposed PUD will create lot sizes and density that is generally consistent with the surrounding area.

The Kona Community Development (KCDP) was adopted by ordinance in 2008 and amended in 2019. The subject property is situated within the Kona Urban Area but is not located in any Transit Oriented Development area. The subject property is situated within Concurrency Zone D which identifies the proposed extension of Kealaka'a Street (9A) from Hina Lani Street south of the Subject Property northward to Holoholo Street. It should be noted that concurrency requirements articulated in the KCDP are only applicable to a change of zone or time extension to an existing change of zone ordinance, thus the requested PUD permit would not be subject to those requirements.

Based on the preceding, the proposed PUD request conforms to the goals, policies and standards of the General Plan and the KCDP.

Any residential or agricultural development shall constitute an environment of sustained desirability and stability for the district that is in harmony with the character of the surrounding area, that results in an intensity of land use no higher than that otherwise specified for the district, and that maintains the standards of open space at least as high as that otherwise specified for the district in which the development occurs.

The subject property is situated adjacent to the south of the Kona Acres subdivision zoned Agricultural and immediately makai of the Kona Hills Estates subdivisions zoned A-1a and Fa-2a and made up of residences and small farms. The applicant owns two adjacent parcels directly to the south and southeast and there is a State-owned parcel directly west of the subject property. These parcels are all similarly zoned A-5a.

The proposed PUD layout complements the character of these surrounding subdivisions with similar lot sizes (1- and 2-acres) and uses (rural/residential and small farms) as those proposed by project. The layout also allows for a creative way to preserve important archaeological and cultural resources located on the property, while not increasing the residential density allowed by the existing A-5a zoning (8 habitable lots). While a 9th lot will be created via the resulting subdivision (preservation lot), a condition of approval will be added that prohibits residential structures on the property, thus ensuring compliance with the density requirement of the Zoning Code.

The development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of Chapter 23 and Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), and the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the

district regulations.

If applied as written, standards included in the Zoning and Subdivision Codes would make the proposed bulk preservation lot and coordinated management of important archeological and cultural resources found on the larger property more difficult.

Furthermore, the limited exceptions to requirements for minimum lot size, building site average width, and lot frontages requested in PUD will allow the development of smaller, potentially more affordable agricultural homestead lots while creating a development that preserves, protects, and perpetuates the property's cultural and archaeological significance.

Finally, based on consultation with the Planning Department's Administrative Permits Division (the division that previously processed PUD applications), the Director is comfortable recommending approval of the entire slate of exceptions, as there were no significant concerns with what was proposed. It should be noted that the proposed project will still be required to go through a formal subdivision process and will be subject to all other requirements of the Zoning and Subdivision Codes, less the exceptions requested here.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka 'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: An archaeological inventory survey (AIS) of the subject property was conducted in 2005 by Rechtman Consulting (Clark and Rechtman 2005) and accepted by the State Historic Preservation Division (SHPD) in 2008. An Archaeological Data Recovery Plan was accepted by SHPD in 2015, a Burial Treatment Plan was accepted by SHPD in 2016, and Archeological Preservation Plans were accepted by SHPD in 2016 and 2021.

The applicant commissioned a report entitled, "*Kula Nei Partners, LLC, Planned Unit Development, Ka Pa'akai O Ka 'Aina Analysis*", prepared by ASM Affiliates in 2019.

No professional floral or faunal survey were conducted for this application; however, biological surveys were conducted as part of the 2006 State Land Use Boundary Amendment.

The valuable cultural, historical, and natural resources found in the rezoning area: The 2005 AIS identified 19 archaeological sites comprised of 66 features, which were all assessed as significant for their information content because they have yielded or are likely to yield information important to understanding the prehistory or history of the project area. One site was additionally assessed as significant due to its association with events that have made an important contribution to the broad patterns of our history, and one site was additionally assessed as significant for its cultural value because of the presence of human remains. Two sites, a lava blister with human remains (Site 24768), and a historic boundary wall (Site 24774), were recommended for preservation and 4 sites (1. Site 24762- Precontact era habitation modified outcrop; 2. Site 24764-Precontact era habitation terrace; 3. Site 24773 – Precontact era Habitation Complex; and 4. Site 24776 Precontact era Agriculture Complex) were recommended for data recovery.

Once the applicant learned that the data recovery for these four sites would require backhoe trenching, the applicant elected to halt all data recovery excavations and to pursue a preservation treatment for these 4 sites instead.

According to the applicant's "*Ka Pa'akai O Ka 'Aina*" analysis, there are no ongoing traditional and customary native Hawaiian rights being exercised or occurring within the subject property.

The biological surveys and applicant observations found no listed or endangered floral or faunal species existing on the subject property.

Possible adverse effect or impairment of valued resources: There may be a possibility that native plants could be destroyed by construction and ground alteration, but this is unlikely as no native plants have been observed on the site. The subject property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: Conditions of approval will require compliance with all immediate, short-term, and long-term conservation requirements articulated in the accepted archaeological plans and a standard, inadvertent archaeological finds condition will also be added.

Inasmuch as there are no ongoing traditional and customary native Hawaiian rights being exercised or occurring within the subject property, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), compliance with State DOT requirements, among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.