

Planning Commission

Lorraine R. Inouye
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

July 15, 1991

Mr. Clayton Kaneshiro Manning
P. O. Box 390900
Keauhou, HI 96739

Dear Mr. Manning:

Special Management Area (SMA) Use Permit Application
Applicant: Clayton Kaneshiro Manning
Construction of Six Single-Family Dwellings & Related Improvements
Tax Map Key: 7-6-17:06

The Planning Commission at its duly held public hearing on July 2, 1991, voted to approve your application, Special Management Area (SMA) Use Permit No. 314, to allow the construction of six single-family dwellings and related improvements on 46,134+ square feet of land. The property is located approximately 450 feet southeast (Keauhou direction) of Kahakai Elementary School, Holualoa 1st and 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205-A, Hawaii Revised Statutes (HRS), and Rule No. 9, Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and, where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

One of the criteria for approving a development within the SMA is that it is consistent with the General Plan and zoning designation. The proposed development conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) map and zoning designation, which designate the area for Low Density Urban uses and as RS-7.5, respectively. The Housing Element of the General Plan states as a goal to "Seek sufficient production of new affordable rental and fee-simple housing in the County in a variety of sizes to satisfactorily accommodate the needs and

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desires of families and individuals." A Course of Action for the North Kona District is to "Aid and encourage the development of a wide variety of housing for this area to attain a diversity of socio-economic housing mix." A profile of housing within the North Kona District reflects acute housing problems for the low and moderate income groups. Land costs and market prices for homes have been influenced by investor and resort/residential markets and may preclude the purchase of house and lot packages by most households in the district. The applicant stated that sale prices for homesites within the subject property was deliberately kept down to provide for "50% to 60% affordable homesites." Prices for homesites within the proposed development ranged from \$42,500 to \$93,500. With the anticipated cost of each dwelling at \$65,000, total costs for each home will range from \$107,500 to \$158,500. Therefore, the proposed development would be consistent with the intent and purpose of the Zoning Code and the General Plan.

Another criteria in reviewing an SMA Use Permit application is that, "The development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest." The proposed development is not anticipated to have any substantial adverse environmental or ecological effects. The subject property, located within an area that has been extensively developed, is not known to contain any unique ecological systems nor provide habitats for any endangered plant or animal species. No adverse impacts on air and water quality are expected to be generated by the proposed development. Air emissions generated during the construction phase can be mitigated by existing regulations. Any potential runoff or discharge as a result of the project can be handled by on-site improvements as may be required by the Department of Public Works. Negative impacts resulting from soil erosion and runoff during site preparation and construction phases are unlikely due to the very thin soil cover and the pahoehoe lava bedrock. However, should erosion or runoff occur, they can be adequately mitigated through compliance with existing regulations.

The proposed development is not anticipated to have any significant adverse impact on coastal ecosystems or public access along the shoreline due to the project's considerable distance from the coastal waters. The subject property is situated approximately 440 feet mauka of Alii Drive at a

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distance of approximately 750 feet at its nearest point from the shoreline.

No archaeological resources are known to exist on the subject property. An August 1990, archaeological inventory survey found no surface features within the property. However, the applicant's archaeological consultant did note that the subject property is located within a "high probability area" in terms of former historical use. It has been the experience of the applicant's consultant to occasionally encounter burials or other cultural materials in small, shallow soil pockets which occur within the general area and which also occur within the subject property. This approval recommendation is conditioned upon notification of the Planning Department and appropriate action should any unidentified sites or remains be found before or during construction activities.

There are no major identified scenic resources and viewplanes from or around the subject property. The proposed single family dwellings will not greatly intensify the visual or structural impact of the area due to the project site being located within an established single family residential subdivision with existing dwellings scattered throughout the immediate area. The height of the proposed dwellings would not exceed the maximum height limit of 35 feet for those properties surrounding the subject property zoned Single Family Residential.

To mitigate any adverse impacts associated with the proposed development such as traffic, noise and air quality, it is recommended that the applicant provide a 20-foot wide pavement within the existing 25-foot wide unimproved right-of-way located adjacent to the northwest of the property. A 7 1/2-foot wide future road-widening setback along the property's northwest boundary to accommodate a 40-foot right-of-way shall also be delineated on plans submitted for Final Plan Approval review. By increasing the existing 25-foot wide right-of-way to 40 feet, the applicant will allow for future improvements to an unimproved roadway that will ultimately provide access between Alii Drive and the proposed Alii Highway. In addressing the concerns and requirements of the Fire Department, the applicant has agreed to provide a fire hydrant to service the subject property as well as to trim existing trees overhanging the access roadway.

Mr. Clayton Kaneshiro Manning
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Approval of this request is subject to the following conditions:

1. The applicants, successors or assigns shall comply with all of the stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within 90 days from the date of approval of the permit.
3. Final Plan Approval for the construction of 6 single family dwellings shall be secured within one year from the effective date of the permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures, driveway circulation, parking areas and fire protection measures associated with the proposed residential development. The applicant shall delineate on plans submitted a 50-foot future road widening setback along the property's northeastern boundary (Kahakai School Access Road) and a 7-1/2-foot future road widening setback along the property's northwestern boundary. Building setbacks shall comply with the requirements of Chapter 25 (Zoning Code). No variance from the Zoning Code shall be applied for or granted.
4. Construction of the proposed development shall commence within one year from the date of receipt of Final Plan Approval and be completed (Certificate of Occupancy) within one year thereafter.
5. The applicant shall provide a minimum 20-foot wide paved access within the 25-foot wide right-of-way located adjacent to the northwest of the subject property. The roadway shall be improved from Alii Drive to and including the property's northwestern boundary prior to issuance of a certificate of occupancy for the first dwelling constructed on the subject property or prior to issuance of a building permit for the second dwelling, whichever comes first. The roadway connection to Alii Drive shall meet with the approval of the Department of Public Works. The roadway connection to Kahakai Elementary School access road shall meet with the approval of the Departments of Public Works and Education.

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6. Should an Improvement District be implemented for the construction of the proposed Alii Highway, the applicant, successors or assigns shall automatically be a participant in the Improvement District, provided, however, that the contribution of land and the construction of improvements can be credited towards the applicant's Improvement District assessment.
7. The applicant shall provide fire protection measures meeting with the approval of the Fire Department prior to the issuance of a certificate of occupancy.
8. A qualified archaeologist shall be on-site to monitor subsurface construction activities associated with the proposed development.
9. Should any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, paving or walls be encountered, work in the area affected shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigating measures have been taken.
10. Should the property be subdivided in the future, no ohana dwellings shall be applied for or granted on the lots. Restrictive covenants relating to this condition shall be reviewed and approved by the Planning Department and the Office of the Corporation Counsel within 90 days from the effective date of this permit. A recorded copy of the restrictive covenant shall be filed with the Planning Department prior to issuance of a certificate of occupancy for any dwelling unit on the subject property.
11. Comply with all other applicable laws, rules, regulations, and requirements, including those of the Departments of Public Works and Health.

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12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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.
13. An extension of time for the performance of conditions within the 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; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) 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). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

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.

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Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,

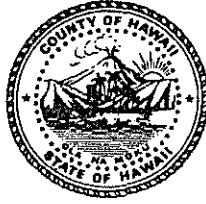
Mike Luce

Mike Luce, Chairman
Planning Commission

6505d
jdk

xc: Mr. Donald McIntosh
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
OSP, CZM Program w/background
DLNR
Fire Department
Department of Education
Department of Health

bcc: Plan Approval Section



County of Hawai'i

LEEWARD PLANNING COMMISSION

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

June 14, 2010

Roy A. Vitousek, III, Esq.
75-170 Hualalai Road, Suite 303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

Special Management Area Use Permit (SMA 314)
Request: Time Extensions to Various Conditions
Applicant: Alii Beach Estates III Condominium Lot Owners
Tax Map Key: 7-6-17:6

The Leeward Planning Commission at its duly held public hearing on May 21, 2010, voted to approve the above-referenced request for an amendment to Condition Nos. 2 (water commitment), 3 (final plan approval), 4 (construction), and 10 (submission of restrictive covenants) of Special Management Area Use Permit No. 314, which allowed the construction of six single family residential units and related improvements. The property is located approximately 450 feet southeast (Keauhou side) of Kahakai Elementary School, Holualoa 1st and 2nd, North Kona, Hawai'i.

Approval of this request is based on the following:

The applicants, Alii Beach Estates III Condominium Lot Owners, have submitted an amendment to Condition Nos. 2 (water commitment), 3 (final plan approval), 4 (construction), and 10 (submission of restrictive covenants) of Special Management Area Use Permit No. 314, which allowed the construction of six single-family residential units and related improvements.

The original applicant, Clayton Kaneshiro Manning, requested a Special Management Area Use Permit to allow for the construction of six single family dwellings and related improvements on approximately 46, 134 square feet of land. The Planning Commission approved Special Management Area Use Permit No. 314 on July 2, 1991,

which had 13 conditions of approval. The initial development plan submitted with the SMA application identified the proposed layout for the six dwellings, the 50-foot future road widening setback along Kahakai School Access Road, and setbacks along the boundaries of the property, but did not identify the 7 ½-foot future road widening setback along Stardust Land or any proposed lot lines identifying the separate units (A through G).

Final Plan Approval was granted on July 17, 1992, for the construction of two of the six dwellings on the property. On October 28, 1998, Attorney Michael Matsukawa submitted a time extension request for Condition No. 3 (secure Final Plan Approval) to the Planning Department. The letter stated that the lot owners (applicants) and the developer (Clayton Kaneshiro Manning) were in litigation for four years. The result of the litigation was that the lot owners obtained the developer's remaining property interests, development rights and power of attorney to complete the project. The intention of the amendment request is for the lot owners to complete the Condominium Property Regime (CPR).

The Planning Director is recommending approval of the requested time extensions for Condition Nos. 2 (water commitment), 3 (final plan approval), 4 (construction), and 10 (submission of restrictive covenants) to allow additional time to work with the lot owners in trying to complete the CPR. It should be noted that this approval recommendation does not grant a tacit approval for the "New Development Plan" submitted with the request, as there are several issues that need to be resolved prior to the plan being approved. As noted in the application, the applicant is concurrently submitting the preliminary map for the CPR and will be subject to the requirements of Article 12 (Condominium Property Regimes) of the Subdivision Code.

One of the main issues regarding the "New Development Plan" is that the proposed project will no longer be able to construct six (6) dwellings on the subject property. As a result, the Planning Director will be limiting the request to the construction of five (5) single family dwellings, instead of the initial request to allow the construction of six (6) single family dwellings. Additionally, as two dwellings have been constructed on the property, it may be difficult for one or both of the existing dwellings to meet current setback requirements. The Planning Director will allow setback variances for "Unit C" and "Unit E" to help the other units meet minimum setback requirements.

The amendment request 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. The applicants have had to face difficult circumstances that resulted in four years of litigation to resolve, which were unforeseen and beyond their control, and delayed the progress of the proposed project. Additionally,

the applicants have expended significant capital to proceed with the project, including improvements to Stardust Lane and litigation costs. Based on the above information, it has been determined that non-compliance was a result of conditions that could not have been foreseen and were beyond the control of the applicants.

The granting of the amendment request would not be contrary to the General Plan or Zoning Code. The request continues to be consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Medium Density Urban and allows for village and neighborhood commercial and single family and multiple family residential and related functions (multiple family residential -- up to 35 units per acre). Additionally, the request continues to be consistent with the zoning for the property, which is Single-Family Residential (RS-7.5). The Single-Family Residential zoned district allows for single-family dwellings as a permitted use.

The granting of the amendment request would not be contrary to the original reasons for the granting of the permit. The amendment request continues to be consistent with the original reasons for approving the Special Management Area Use Permit. It was originally determined that the proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. The proposed development also continues to be consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.

Lastly, the applicants will continue to be required to comply with all conditions of approval for Special Management Area (SMA) Use Permit No. 314. It is our understanding that the requirements for Condition No. 5 (roadway improvements) have been met.

Approval of this amendment request is subject to the following conditions (Material to be added is underscored; material to be deleted is bracketed and struck through):]

1. The applicants, successors, or assigns shall comply with all of the stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within 90 days from the date of approval of [~~the permit~~]this amendment.

3. Construction of the remaining three (3) dwellings shall be completed within five (5) years from the effective date of this amendment. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. [Final Plan Approval for the construction of 6 single family dwellings shall be secured within one year from the effective date of the permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty five days prior to the date by which plan approval must be secured] Plans shall also identify structures, driveway circulation, parking areas, and fire protection measures associated with the proposed residential development. The applicant shall delineate on plans submitted a ~~[50-foot]~~52-foot future road widening setback along the property's northeastern boundary (Kahakai School Access Road) and a 7-1/2-foot future road widening setback along the property's northwestern boundary. Building setbacks shall comply with the requirements of Chapter 25 (Zoning Code). No variance from the minimum yard setback requirements of the Zoning Code shall be applied for or granted except for "Unit C" and "Unit E" identified on the New Development Plan.
4. ~~[Construction of the proposed development shall commence within one year from the date of receipt of Final Plan Approval and be completed (Certificate of Occupancy) within one year thereafter.]~~This project shall be limited to the construction of five (5) single family dwellings.
5. ~~[The applicant shall provide a minimum 20 foot wide paved access within the 25-foot wide right of way located adjacent to the northwest of the subject property. The roadway shall be improved from Alii Drive to and including the property's northwestern boundary prior to the issuance of a certificate of occupancy for the first dwelling constructed on the subject property or prior to the issuance of a building permit for the second dwelling, whichever comes first. The roadway connection to Alii Drive shall meet with the approval of the Department of Public Works. The roadway connection to Kahakai Elementary School access road shall meet with the approval of the Departments of Public Works and Education.]~~
- [6.] Should an Improvement District be implemented for the construction of the proposed Ali'i Highway, the applicants, successors, or assigns shall automatically be a participant in the Improvement District, provided, however, that the contribution of land and the construction of improvements can be credited towards the applicant's Improvement District assessment.

- [7.]6. The applicant shall provide fire protection measures meeting with the approval of the Fire Department prior to the issuance of ~~[a certificate of occupancy]~~Final Plan Approval for the remaining three (3) dwellings.
- [8.]7. A qualified archaeologist shall be on-site to monitor subsurface construction activities associated with the proposed development.
- [9.]8. Should any unidentified sites or remains, such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walls be encountered, work in the area affected shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigating measures have been taken.
- [10.]9. Should the property be subdivided in the future, no ohana dwellings shall be applied for or granted on the lots. Restrictive covenants relating to this condition shall be reviewed and approved by the Planning Department and the Office of the Corporation Counsel within 90 days from the effective date of this ~~[permit]~~amendment. A recorded copy of the restrictive covenant shall be filed with the Planning Department prior to the issuance of a certificate of occupancy for any dwelling unit on the subject property.
10. If sound abatement measures are required to qualify the Kahului to Keauhou Parkway for federal funding because of the residences built or planned to be built in the area covered by this permit, the applicants, its successors or assigns shall be required to pay for such measures. The Planning Director may waive this requirement, and the corresponding notice to prospective purchasers, if a noise study prepared by a licensed engineer, and approved by the Planning Director, determines that noise abatement measures will not be necessary.

11. Until the completion of the Kahului to Keauhou Parkway through the Subject Property, covenants in all deeds to the Subject Property, including deeds to individual units and to any lots subdivided from the Subject Property, and promotional and sales materials given to prospective purchasers, shall provide notice to prospective owners of the following concepts. The sales materials and covenants for the project do not have to follow the exact wording of this condition, but shall inform the prospective purchasers of the substance of this condition. "Plans for the area involve the construction of the Kahului to Keauhou Parkway within a right-of-way shown on the attached map. The Kahului to Keauhou Parkway will be a major highway that is expected to carry a high volume of traffic. The County of Hawai'i has determined that the construction of this highway is important to the proper development of Kona as a whole. The construction of the Kahului to Keauhou Parkway will create noise, dust, and other impacts. The contractor building the Kahului to Keauhou Parkway will be required to follow some regulations to reduce noise and dust, but some impacts will occur. After completion, traffic on the Kahului to Keauhou Parkway will cause noise and other effects that must be expected from a busy roadway. A prospective purchaser who cannot accept the future construction of the Kahului to Keauhou Parkway in this area is advised to seek another area to reside. This property was issued a Special Management Area Use Permit on condition that if noise abatement measures between the Kahului to Keauhou Parkway and adjacent residences in this project must be taken to qualify the Kahului to Keauhou Parkway Project for federal funding, the private owners would be required to pay for noise abatement."

~~[11.]~~12. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements, including those of the Departments of Public Works and Health.

~~[12.]~~13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of ~~[the permit]~~ this amendment. 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.

~~[13.]~~14. ~~[An extension of time for the performance of conditions within the 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~~

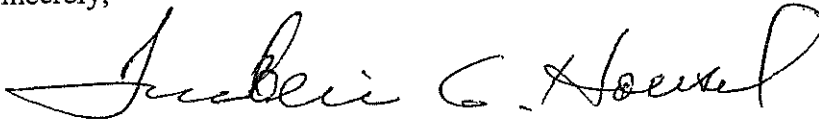
Roy A. Vitousek, III, Esq.
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~~contrary to the General Plan or Zoning Code; e) granting of the time extension would not be contrary to the original reasons for granting of the permit; and d) the time extension granted shall be for a period not to exceed 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. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director [shall] may initiate procedures to revoke this Special Permit.

This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact the Planning Department at 961-8288.

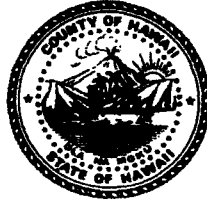
Sincerely,



Frederick Housel, Chairman
Leeward Planning Commission

Laliibeachestatessma314

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Department of Land and Natural Resources/HPD
Ms. Susan Gagorik
Zoning Inspector-Kona
Plan Approval Section
Mr. Gilbert Bailado



County of Hawai'i

LEEWARD PLANNING COMMISSION

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

AUG 3 2015

Lisa Ayabe, Esq.
Cades Schutte
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

Dear Ms. Ayabe:

SUBJECT: Amendment to Special Management Area Use Permit No. SMA 314
Applicant: Ali'i Beach Estates III Condominium Lot Owners
Request: Amendment to Condition No. 3 (Construction Timeline) to Remove
Deadline Requirement to Construct Remaining Three Dwellings
Tax Map Key: 7-6-017:006

The Leeward Planning Commission, at its duly held public hearing on July 16, 2015, voted to approve the above-referenced request to amend Special Management Area (SMA) Use Permit No. 314 to amend the time to complete construction of three remaining dwellings. SMA No. 314 allowed the construction of six single-family residential units and related improvements within the Special Management Area (SMA). The property is located at approximately 450 feet southeast (Keauhou side) of Kahakai Elementary School, Hōlualoa 1st and 2nd, North Kona, Hawai'i.

Approval of this amendment is subject to the following amended conditions:

1. The applicants, successors, or assigns shall comply with all of the stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within 90 days from the date of approval of this amendment.

Hawai'i County is an Equal Opportunity Provider and Employer

AUG 03 2015

3. Final Condominium Property Regime (CPR) or Final Subdivision Approval shall be secured from the Planning Department within 5 years from the effective date of this amendment. The applicant shall delineate on plans submitted a 52-foot future road widening setback along the property's northeastern boundary (Kahakai School Access Road) and a 7-1/2-foot future road widening setback along the property's northwestern boundary. Building setbacks shall comply with the requirements of Chapter 25 (Zoning Code). No variance from the minimum yard setback requirements of the Zoning Code shall be applied for or granted except for "Unit C" and "Unit E" identified on the New Development Plan.
4. This project shall be limited to the construction of five (5) single family dwellings.
5. Should an Improvement District be implemented for the construction of the proposed Ali'i Highway, the applicants, successors, or assigns shall automatically be a participant in the Improvement District, provided, however, that the contribution of land and the construction of improvements can be credited towards the applicant's Improvement District assessment.
6. The applicant shall provide fire protection measures meeting with the approval of the Fire Department prior to the issuance of Final Condominium Property Regime (CPR) or Final Subdivision Approval.
7. A qualified archaeologist shall be on-site to monitor subsurface construction activities associated with the proposed development.
8. Should any unidentified sites or remains, such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walls be encountered, work in the area affected shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigating measures have been taken.
9. Should the property be subdivided in the future, no ohana dwellings shall be applied for or granted on the lots. Restrictive covenants relating to this condition shall be reviewed and approved by the Planning Department and the Office of the Corporation Counsel within 90 days from the effective date of this amendment. A recorded copy of the restrictive covenant shall be filed with the Planning Department prior to the issuance of a certificate of occupancy for any dwelling unit on the subject property.

10. If sound abatement measures are required to qualify the Kahului to Keauhou Parkway for federal funding because of the residences built or planned to be built in the area covered by this permit, the applicants, its successors, or assigns shall be required to pay for such measures. The Planning Director may waive this requirement, and the corresponding notice to prospective purchasers, if a noise study prepared by a licensed engineer, and approved by the Planning Director, determines that noise abatement measures will not be necessary.
11. Until the completion of the Kahului to Keauhou Parkway through the Subject Property, covenants in all deeds to the Subject Property, including deeds to individual units and to any lots subdivided from the Subject Property, and promotional and sales materials given to prospective purchasers, shall provide notice to prospective owners of the following concepts. The sales materials and covenants for the project do not have to follow the exact wording of this condition, but shall inform the prospective purchasers of the substance of this condition. "Plans for the area involve the construction of the Kahului to Keauhou Parkway within a right-of-way shown on the attached map. The Kahului to Keauhou Parkway will be a major highway that is expected to carry a high volume of traffic. The County of Hawaii has determined that the construction of this highway is important to the proper development of Kona as a whole. The construction of the Kahului to Keauhou Parkway will create noise, dust, and other impacts. The contractor building the Kahului to Keauhou Parkway will be required to follow some regulations to reduce noise and dust, but some impacts will occur. After completion, traffic on the Kahului to Keauhou Parkway will cause noise and other effects that must be expected from a busy roadway. A prospective purchaser who cannot accept the future construction of the Kahului to Keauhou Parkway in this area is advised to seek another area to reside. This property was issued a Special Management Area Use Permit on condition that if noise abatement measures between the Kahului to Keauhou Parkway and adjacent residences in this project must be taken to qualify the Kahului to Keauhou Parkway Project for federal funding, the private owners would be required to pay for noise abatement."
12. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements, including those of the Departments of Public Works and Health.
13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this amendment. The report shall include, but not be limited to, the status of the development and to what extent the conditions

Lisa Ayabe, Esq.
Cades Schutte
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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.

14. 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.

[Note: Ramseyer version available upon request.]

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.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8142.

Sincerely,



Brandi K. Beaudet, Chairman
Leeward Planning Commission

LAliebestateIIlamendSMA314lpc

cc: Roy A. Vitousek III, Esq., Cades Schutte
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State DLNR-HPD
Mr. Gilbert Bailado
West Hawaii Division, Planning Department

Enclosures: PC Findings

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

ALI'I BEACH ESTATES III CONDOMINIUM LOT OWNERS
AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 314

The applicants, Ali'i Beach Estates III Condominium Lot Owners, are requesting an additional five years to complete the construction of the remaining three (3) dwellings, or to simply remove the completion deadline, required by Condition No. 3 of Special Management Area Use Permit No. 314, which was approved by the Planning Commission on July 2, 1991 to allow the construction of six single-family dwellings and related improvements on 46,134+ square feet of land. The property is located approximately 450 feet southeast (Keauhou side) of Kahakai Elementary School, Hōlualoa 1st and 2nd, North Kona, Hawai'i, TMK: 7-6-17:6.

Two of the owners (Woodland and Suppes) have completed construction of a single family dwelling on each of their Condominium Property Regime (CPR) units that were established. These CPR unit owners do not have any control over the timing of the construction of the other three (3) dwellings and do not want the permit jeopardized by a condition for which they have no control over compliance. In response to this, the applicants are requesting that the completion deadline within Condition No. 3 be deleted. If this is not an acceptable option, they are requesting an additional 5-year time extension for Condition No. 3 to complete construction of the three (3) remaining dwellings.

The original applicant, Clayton Kaneshiro Manning, requested a Special Management Area Use Permit to allow for the construction of six single family dwellings and related improvements on approximately 46,134 square feet of land. The Planning Commission approved Special Management Area Use Permit No. 314 on July 2, 1991, subject to 13 conditions of approval. Final Plan Approval was granted on July 17, 1992 for the construction of two of the six dwellings on the property. On October 28, 1998, Attorney Michael Matsukawa submitted a time extension request for Condition No. 3 (secure Final Plan Approval) to the Planning Department. The letter stated that the lot owners (applicants) and the developer (Clayton Kaneshiro Manning) were in litigation for four years. The outcome of the litigation was that the lot owners obtained the developer's remaining property interests, development rights and power of attorney to complete the project. The intention of the amendment request is for the unit owners to complete the Condominium Property Regime (CPR) with no deadline to complete the three remaining dwellings.

Previously, one of the main issues regarding the "New Development Plan" was that the proposed project would no longer be able to construct six (6) dwellings on the subject property as originally represented. As a result, the Planning Commission, as part of the 2010 amendment, limited the request to the construction "completion" of five (5) single family dwellings. Additionally, as two dwellings were constructed on the property, it would be difficult for one or both of the existing dwellings to meet current setback requirements. The Planning Director has previously allowed setback variances for "Unit C" and "Unit E" to help the other units meet minimum setback requirements.

In 2010, the applicants submitted amendments to Condition Nos. 2 (water commitment), 3 (final plan approval), 4 (construction), and 10 (submission of restrictive covenants) of Special Management Area Use Permit No. 314, that were approved by the Planning Commission to allow for an additional 5 years to construct the remaining three (3) dwellings.

The applicants have submitted and received Tentative Approval (TA) for a 6-unit Condominium Property Regime (CPR) since the approval of the last amendment request. One of the units (Unit G) is being set aside for a future road widening setback as required by Condition No. 3 and Units A and B have been combined into one unit (Unit A/B).

The Planning Director is recommending that the time extension be applied to the approval of a Condominium Property Regime (CPR) that is currently being processed by the Planning Department or a Final Subdivision Approval rather than the time to construct the remaining three (3) dwellings or deleting the condition in its entirety. This is a common practice in similar approvals for subdivisions, and the CPR in this case has to meet similar requirements as would be required for approval of a subdivision. Therefore, Condition No. 3 of SMA Use Permit No. 314 will be amended to allow 5 years to secure Final CPR Approval for the proposed project.

The amendment request is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence. The applicants have had to face difficult circumstances that resulted in four years of litigation to resolve, which were unforeseen and beyond their control, and delayed the progress of the proposed project. Additionally, the applicants have expended significant capital to proceed with the project, including improvements to Stardust Lane and litigation costs. Based on the above information, it has been determined that non-compliance was a result of conditions that could not have been foreseen and were beyond the control of the applicants.

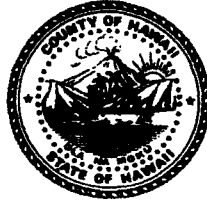
The granting of the amendment request would not be contrary to the General Plan or Zoning Code. The request continues to be consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Medium Density Urban and allows for village and neighborhood commercial and single family and multiple family residential and related functions (multiple family residential -- up to 35 units per acre). Additionally, the request continues to be consistent with the zoning for the property, which is Single-Family Residential (RS-7.5). The Single-Family Residential zoned district allows for single-family dwellings as a permitted use.

The granting of the amendment request would not be contrary to the original reasons for the granting of the permit. The amendment request continues to be consistent with the original reasons for approving the Special Management Area Use Permit. It was originally determined that the proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. The proposed development also continues to be consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the

Planning Commission Rules of Practice and Procedure.

Lastly, the applicants will continue to be required to comply with all conditions of approval for Special Management Area (SMA) Use Permit No. 314. This approval is made with the understanding that the applicants remain 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), 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.

Based upon the above findings, the proposed amendment is consistent with the objectives and policies of Chapter 205A, HRS.



County of Hawai'i

LEEWARD PLANNING COMMISSION

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

AUG 3 2015

Lisa Ayabe, Esq.
Cades Schutte
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

Dear Ms. Ayabe:

SUBJECT: Amendment to Special Management Area Use Permit No. SMA 314
Applicant: Ali'i Beach Estates III Condominium Lot Owners
Request: Amendment to Condition No. 3 (Construction Timeline) to Remove
Deadline Requirement to Construct Remaining Three Dwellings
Tax Map Key: 7-6-017:006

The Leeward Planning Commission, at its duly held public hearing on July 16, 2015, voted to approve the above-referenced request to amend Special Management Area (SMA) Use Permit No. 314 to amend the time to complete construction of three remaining dwellings. SMA No. 314 allowed the construction of six single-family residential units and related improvements within the Special Management Area (SMA). The property is located at approximately 450 feet southeast (Keauhou side) of Kahakai Elementary School, Hōlualoa 1st and 2nd, North Kona, Hawai'i.

Approval of this amendment is subject to the following amended conditions:

1. The applicants, successors, or assigns shall comply with all of the stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within 90 days from the date of approval of this amendment.

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AUG 03 2015

3. Final Condominium Property Regime (CPR) or Final Subdivision Approval shall be secured from the Planning Department within 5 years from the effective date of this amendment. The applicant shall delineate on plans submitted a 52-foot future road widening setback along the property's northeastern boundary (Kahakai School Access Road) and a 7-1/2-foot future road widening setback along the property's northwestern boundary. Building setbacks shall comply with the requirements of Chapter 25 (Zoning Code). No variance from the minimum yard setback requirements of the Zoning Code shall be applied for or granted except for "Unit C" and "Unit E" identified on the New Development Plan.
4. This project shall be limited to the construction of five (5) single family dwellings.
5. Should an Improvement District be implemented for the construction of the proposed Ali'i Highway, the applicants, successors, or assigns shall automatically be a participant in the Improvement District, provided, however, that the contribution of land and the construction of improvements can be credited towards the applicant's Improvement District assessment.
6. The applicant shall provide fire protection measures meeting with the approval of the Fire Department prior to the issuance of Final Condominium Property Regime (CPR) or Final Subdivision Approval.
7. A qualified archaeologist shall be on-site to monitor subsurface construction activities associated with the proposed development.
8. Should any unidentified sites or remains, such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walls be encountered, work in the area affected shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigating measures have been taken.
9. Should the property be subdivided in the future, no ohana dwellings shall be applied for or granted on the lots. Restrictive covenants relating to this condition shall be reviewed and approved by the Planning Department and the Office of the Corporation Counsel within 90 days from the effective date of this amendment. A recorded copy of the restrictive covenant shall be filed with the Planning Department prior to the issuance of a certificate of occupancy for any dwelling unit on the subject property.

10. If sound abatement measures are required to qualify the Kahului to Keauhou Parkway for federal funding because of the residences built or planned to be built in the area covered by this permit, the applicants, its successors, or assigns shall be required to pay for such measures. The Planning Director may waive this requirement, and the corresponding notice to prospective purchasers, if a noise study prepared by a licensed engineer, and approved by the Planning Director, determines that noise abatement measures will not be necessary.
11. Until the completion of the Kahului to Keauhou Parkway through the Subject Property, covenants in all deeds to the Subject Property, including deeds to individual units and to any lots subdivided from the Subject Property, and promotional and sales materials given to prospective purchasers, shall provide notice to prospective owners of the following concepts. The sales materials and covenants for the project do not have to follow the exact wording of this condition, but shall inform the prospective purchasers of the substance of this condition. "Plans for the area involve the construction of the Kahului to Keauhou Parkway within a right-of-way shown on the attached map. The Kahului to Keauhou Parkway will be a major highway that is expected to carry a high volume of traffic. The County of Hawaii has determined that the construction of this highway is important to the proper development of Kona as a whole. The construction of the Kahului to Keauhou Parkway will create noise, dust, and other impacts. The contractor building the Kahului to Keauhou Parkway will be required to follow some regulations to reduce noise and dust, but some impacts will occur. After completion, traffic on the Kahului to Keauhou Parkway will cause noise and other effects that must be expected from a busy roadway. A prospective purchaser who cannot accept the future construction of the Kahului to Keauhou Parkway in this area is advised to seek another area to reside. This property was issued a Special Management Area Use Permit on condition that if noise abatement measures between the Kahului to Keauhou Parkway and adjacent residences in this project must be taken to qualify the Kahului to Keauhou Parkway Project for federal funding, the private owners would be required to pay for noise abatement."
12. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements, including those of the Departments of Public Works and Health.
13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this amendment. The report shall include, but not be limited to, the status of the development and to what extent the conditions

Lisa Ayabe, Esq.
Cades Schutte
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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.

14. 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.

[Note: Ramseyer version available upon request.]

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.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8142.

Sincerely,



Brandi K. Beaudet, Chairman
Leeward Planning Commission

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cc: Roy A. Vitousek III, Esq., Cades Schutte
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State DLNR-HPD
Mr. Gilbert Bailado
West Hawaii Division, Planning Department

Enclosures: PC Findings

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

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Based upon the above findings, the proposed amendment is consistent with the objectives and policies of Chapter 205A, HRS.