

Harry Kim
Mayor

Wil Okabe
Managing Director



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Nancy Carr Smith, Vice Chair
Scott Church
Perry Kealoha
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Faith "Faye" Yates

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

JAN 26 2020

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

Dear Mr. Mooers:

SUBJECT: Special Management Area Use Permit No. 379 (Docket No. SMA 97-000001)
Applicant: Kohala Shoreline, LLC (formerly Gentry-Pacific, Ltd.)
Request: Revocation of SMA No. 379, Which Allowed the Development of a
50-Lot Single-Family Residential Subdivision and Related Improvements
Tax Map Key: 5-9-001:008

The Leeward Planning Commission, at its duly held public hearing on January 16, 2020, considered the above-referenced request for the revocation of SMA Permit No. 379. SMA No. 379, was originally granted in 1997 to allow the development of a 50-lot single-family residential subdivision and related improvements on 37.88 acres of land. The property is located on the makai (west) side of Akoni Pule Highway, directly across from the entrance of Kohala Ranch at Kahuā 1st, North Kohala, Hawai'i.

The Commission voted to officially revoke SMA Permit No. 379 as requested by the applicant.

Should you have any questions, please contact Jeff Darrow of the Planning Department at (808) 961-8158.

Sincerely,
Keith F.
Unger

Digitally signed by Keith
F. Unger
Date: 2020.01.26
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Keith F. Unger, Chairman
Leeward Planning Commission

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Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 2

cc: Mr. Nathan P. Myhrvold/Kohala Shoreline, LLC
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Department of Land and Natural Resources-HPD
DOT-Highways-Honolulu
Department of Health
West Hawaii Division
GIS Section

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL

Z 095 323 924

SEP 08 1997

Mr. Sidney M. Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Management Area Use Permit Application (SMA 97-1)
Request: Establish a 50-Lot Single Family Residential Subdivision
and Related Improvements
Applicant: Gentry-Pacific, Ltd.
Tax Map Key: 5-9-1:8

Please be informed that we are rescinding our August 26, 1997 letter to you as it was in error. We apologize for any inconvenience this may have caused you.

Please refer to the Planning Commission's August 20, 1997, letter informing you of the Commission's decision to approve the above application with conditions. Condition 7 has been amended to include the concern raised to address the American Disabilities Act.

Therefore, the following are the conditions to SMA Use Permit No. 379:

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The effective date of this Special Management Area Use Permit shall be the effective date of the Change of Zone ordinance.
3. The applicant, its successors or assigns shall be responsible for complying with all of the conditions of approval of the Change of Zone ordinance.
4. Final Subdivision Approval of the proposed residential subdivision shall be secured from the Planning Director within five (5) years from the effective date of this permit.
5. All above ground structures shall be set back a minimum of 50 feet from the front property line along Akoni Pule Highway.
6. A preliminary site plan shall be redesigned in order to create mauka-makai view corridors from Akoni Pule Highway and shall be submitted in conjunction with

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the subdivision plans. Such plan shall meet with the approval of the Planning Department.

7. A mauka-makai road access of sufficient width to accommodate vehicle access 24 hours a day for drop off and pick up shall be provided, along with the minimum 10-foot wide lateral public access walkway along the shoreline. The type of improvements and specific location of the walkway shall be determined at the time of subdivision approval review. Further, a minimum of four on-site public parking stalls to serve the walkway, one of which shall be to accommodate persons with disabilities and located reasonably close to the lateral shoreline access, shall be provided and clearly identified. A shoreline setback variance shall be secured for any improvements to the public access which will be within the 40-foot shoreline setback area. Construction of the public walkway and parking stalls shall be completed prior to issuance of any building permit for any structures.
8. The applicant shall develop and submit a comprehensive public access plan for the subject property for review and approval to the Planning Director, in consultation with the Department of Land and Natural Resources (Na Ala Hele Trails Program), in conjunction with Final Subdivision Approval. The public access plan shall provide for mauka-makai and lateral shoreline pedestrian accessways, public parking stalls for users of the shoreline area, signage and restrictions on use (if any).
9. A drainage study of the project site shall be prepared for review and approval by the Department of Public Works, in conjunction with submittal of plans for subdivision review. Drainage improvements shall be constructed or bonded in a manner meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.
10. A Data Recovery Plan and Preservation Plan shall be prepared for the review and approval by the Planning Director in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD). Proposed mitigation treatment (preservation in place or disinternment/reinternment) for burial sites must be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for subdivision review and prior to any approval for any land alteration permits.
11. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

12. Comply with applicable laws, rules, regulations and requirements of other affected agencies for approval of the proposed development within the subject property, including the Department of Health.
13. An initial 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 applicants, its 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 this permit.
 - 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).
14. Restrictive covenants in the deeds of all proposed residential lots within the subject property shall prohibit Bed and Breakfasts on each lot. A copy of the proposed covenants to be recorded with the Bureau of Conveyances shall be submitted with the plans for subdivision to the Planning Director for review and approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval.

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 feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,


Kevin M. Balog, Chairman
Planning Commission

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of State Planning, CZM Program
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Department of Health
Mr. Joseph Fadrowsky, III

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
Z 095 323 973

AUG 20 1997

Mr. Sidney M. Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Management Area Use Permit Application (SMA 97-1)
Request: Establish a 50-Lot Single Family Residential Subdivision
and Related Improvements
Applicant: Gentry-Pacific, Ltd.
Tax Map Key: 5-9-1:8

The Planning Commission at its duly held public hearing on August 8, 1997, voted to approve the above-referenced application. Special Management Area Use (SMA) Permit No. 379 is hereby issued to develop a 50-lot single family residential subdivision and related improvements on approximately 37.88 acres of land. The property is located on the makai side of Akoni Pule Highway directly across the entrance to Kohala Ranch at Kahua 1st, North Kohala, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS) and 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 an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

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. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options. The proposed development is located makai of Akoni-Pule Highway. The proposed plan calls for a 50-lot residential subdivision. The lots would vary in size between 15,000 square feet to 1+ acre. Each lot would be configured in a manner so as to take advantage of the natural terrain of the site. Rather than grading the entire site and reshaping the existing terrain, every reasonable construction effort would be made to make the project conform to the

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natural environment. That design principle accounts for the lot size variation. There will be design guidelines to restrict structures to certain sizes, building pads, envelopes, colors, materials and to minimize the mauka/makai viewplane impacts from the highway. There would also be restrictive covenants, including a "no ohana" provision. All interior roads would be constructed in a manner meeting with the requirements of the County of Hawaii. The roads will be designed and constructed in a manner to address drainage concerns. The roads are not intended to be dedicated to the County.

Provisions for a 10-foot wide public access to and along the shoreline will also be made. Tentative plans call for a 4-stall public parking area at the south end of the property. There will also be lateral access along the length of the subject parcel.

Therefore, although there will be a diminution of open space and alteration of the existing coastal viewplane, the project as proposed would have no adverse impact to recreational and visual resources, access to and along the shoreline nor coastal ecosystems.

The property is presently overgrown. Fauna consists of introduced species of birds and mammal pests. No endemic birds were recorded on the property, although short-eared owl or Pueo and the endangered Hawaiian Hawk or 'Io may on rare occasions be seen in this area. Three Pacific Golden Plover were recorded during the survey. Although none were observed during the survey, the Ruddy Turnstone and the Wandering Tattler may also occur along the shoreline. Feral mammal observed on the project site include Indian mongoose. Cat tracks were also found.

A botanical survey was conducted by Char and Associates. The excessively drained, extremely stony soils support thick mats of buffel grass and scattered trees of kiawe. A total of only 29 plant species were found during the field studies. Of the plant species, 24 are introduced or alien species and 5 are native. Of the natives, 4 are indigenous and 1 is endemic. The native plants are: pili grass, pau o Hi'iaka, 'ilima, alena, and 'uhaloa. None of the plants which were inventoried are listed as threatened and endangered species.

The proposed development would not impact the immediate adjacent properties as the subject property is surrounded by Kohala Estates, Kohala Ranch and Kohala By The Sea which are situated mauka of the property and the Akoni Pule Highway. These large agricultural lot subdivisions range in size from 1 and 3 acres to 20+ acres and were developed over the past 20 years. Kohala Waterfront Joint Venture is located southeast of the subject property. Kohala Waterfront Joint Venture was granted an amendment to SMA Use Permit No. 212 for the construction of a 50-lot single family residential subdivision, zoned Multiple Family Residential-4,000 square foot (RM-4). Property to the northwest is owned by the State of Hawaii. It is currently vacant.

The proposed development is 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. Portions of the property along the coastline are located within Zone VE-9, a coastal hazard area with a flood elevation of nine feet. Other portions of the property along the highway are within Zone X, outside of the 500-year flood plain. The hydrological features and

characteristics of the site are typical of the West Hawaii and North Kohala Region. The mean annual rainfall is approximately 10 inches per year. Twenty percent of the annual rainfall occurs during the month of January. The evaporation rate for the area is one of the highest in the State.

Although there are no perennial streams or surface water features on the site, seven major drainageways carry a large volume of water from the mauka watershed to the ocean during rare prolonged rainy periods. The shoreline is rocky and exposed to the surf and wave action from the open ocean. The project area is within the Kohala Hydrographic area (Hawaii Resources Regional Study Team, 1979). A study conducted by Charles L. Murdoch and Richard E. Green assesses the potential impact of fertilizers and pesticides on the proposed project. The study concluded that there is no reason to expect any significant adverse impact of chemicals on the quality of the shoreline water. The study also added that "Given the likely brackish condition of the groundwater at the project location, there will be no significant negative impact on the groundwater aquifer even if small quantities of chemicals are leached to the water table. The ground water discharges into the ocean and will be subsequently mixed with seawater, as is the case with runoff." Therefore, as a condition of approval the Department of Public Works recommends a drainage system be performed to ensure adequate drainage easements through the proposed subdivision.

The Department of Health requires that if there is any type of process wastewater discharge from the project into State waters the applicant may be required to apply for an individual NPDES permit. The applicant has stated that they will file a Notice of Intent for a NPDES permit. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects on the coastal resources or environment.

An archaeological inventory survey was conducted on the subject property by Paul H. Rosendahl Inc. The original survey report was revised pursuant to comments received from the State Department of Land and Natural Resources, State Historic Preservation Division (DLNR-SHPD) dated June 16, 1993, January 11, 1994 and January 20, 1995. The survey identified 68 sites consisting of 177 discrete features within the two parcels. It appears that there are at least 40 sites on the subject parcel. Fifty two (52) of the 68 sites identified were assessed as significant solely for information content. Of the 52 sites, 8 sites were deemed "no further work required" while the other 44 required further data collection. Five (5) of the remaining 16 sites were assessed as "significant for information content and as provisionally significant for cultural value, pending further data collection." Further data collection and provisional preservation "as is" are recommended and will be conducted. Four sites were assessed as significant for information content and as excellent examples of site types and for cultural value. These sites are recommended for further data collection followed by preservation within interpretive development. The remaining site is assessed as significant for information and content and cultural value (Site 15261, trail). Normally trails require preservation, however, the integrity of site 15261 is poor, as the trail is discontinuous and heavily eroded. No further work was recommended for the trail. Four sites have been identified as containing human burials

(site 2491, 4004, 4013, 16130). Five sites (2493, 16126, 16127, 16136, 16162) require further data collection.

The preparation of a historic preservation plan and the establishment of buffer zones, interim protection measures and remaining archaeological data recovery still needs to be completed. Therefore, a condition of approval will be included stating that the applicant fully implement the approved historic preservation plan prior to securing Final Subdivision Approval of the proposed development. The implementation of this mitigation plan will satisfy the SMA objective to "Protect, preserve and where desirable restore significant historic and cultural resources."

The proposed development is consistent with the County General Plan and Zoning Code. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area for Low Density Urban. Low Density designation refers to single family residential in character, ancillary community and public uses and convenience type commercial uses. This designation does not refer to density limitations however, this designation generally has been at a density of 4 units per acre. The average density relating to the proposed request (50 lots over 38+ acres) would amount to 1.5 units per acre. Therefore, it is determined that the request is consistent with the urban form depicted on the LUPAG Map for this area of North Kohala.

The applicant's proposal is a single family residential subdivision. It is in close proximity to a 50-lot subdivision called Kohala Waterfront Joint Venture zoned Multiple Family Residential-4,000 square foot (RM-4). The proposed reclassification is for a single family residential land use designation.

The visual impacts along the coastal view plane and open space of the development will be somewhat diminished as the site is located makai of the Akoni-Pule Highway. To mitigate these concerns there will be design guidelines to ensure that the project, when fully developed will only minimally affect coastal viewplanes. Covenants will be developed to restrict structures to certain sizes, building pads, envelopes, colors, materials, etc. to minimize mauka\makai viewplane impacts from the highway, as well as to minimize excessive alteration of the area's natural terrain. The potential for retaining the regional vistas will still exist.

Mindful of the type of service the applicant will provide to the residents of North Kohala, the proposed use will compliment the following goals, policies and standards of the Land Use and Residential Elements of the General Plan:

- o Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- o The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- o To maximize choices of single-family residential lots and/or housing for residents of the County.

- o To ensure compatible uses within and adjacent to single-family residential zoned areas.
- o To provide single-family residential areas conveniently located to public and private services, shopping, other community activities and convenient access to employment centers.
- o Areas shall have basic improvements and amenities necessary for immediate use.

The proposed request would also complement the following Housing Element goals and policies by creating a mix of residential housing opportunities, maintaining a housing supply that allows a variety of choice and by providing housing units geared toward the middle income bracket.

- o Attain safe, sanitary and livable housing for the residents of the County of Hawaii.
- o Attain a diversity of socio-economic housing mix throughout the different parts of the County.
- o Maintain a housing supply which allows a variety of choice.
- o Develop better places to live in Hawaii County by creating viable communities with decent housing and suitable living environments for our people.
- o Improve and maintain the quality and affordability of the existing housing stock.
- o 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 desires of families and individuals.
- o Ensure that housing is available to all persons regardless of age, sex, marital status, ethnic background and income

The proposed use would also conform to the following goals and policies of the Economic Element:

- o Provide residents with opportunities to improve their quality of life.
- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

Based on the above findings, it is determined that the proposed development will not have any substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to

Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is subject to the following conditions. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the Special Management Area Major Use Permit.

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The effective date of this Special Management Area Use Permit shall be the effective date of the Change of Zone ordinance.
3. The applicant, its successors or assigns shall be responsible for complying with all of the conditions of approval of the Change of Zone ordinance.
4. Final Subdivision Approval of the proposed residential subdivision shall be secured from the Planning Director within five (5) years from the effective date of this permit.
5. All above ground structures shall be set back a minimum of 50 feet from the front property line along Akoni Pule Highway.
6. A preliminary site plan shall be redesigned in order to create mauka-makai view corridors from Akoni Pule Highway and shall be submitted in conjunction with the subdivision plans. Such plan shall meet with the approval of the Planning Department.
7. A mauka-makai road access of sufficient width to accommodate vehicle access 24 hours a day for drop off and pick up shall be provided, along with the minimum 10-foot wide lateral public access walkway along the shoreline. The type of improvements and specific location of the walkway shall be determined at the time of subdivision approval review. Further, a minimum of four on-site public parking stalls to serve the walkway shall be provided and clearly identified. A shoreline setback variance shall be secured for any improvements to the public access which will be within the 40-foot shoreline setback area. Construction of the public walkway and parking stalls shall be completed prior to issuance of any building permit for any structures.
8. The applicant shall develop and submit a comprehensive public access plan for the subject property for review and approval to the Planning Director, in consultation with the Department of Land and Natural Resources (Na Ala Hele Trails Program), in conjunction with Final Subdivision Approval. The public access plan shall provide for mauka-makai and lateral shoreline pedestrian accessways, public parking stalls for users of the shoreline area, signage and restrictions on use (if any). Such public access improvements shall be completed prior to Final Subdivision Approval for any portion of the subject property.

9. A drainage study of the project site shall be prepared for review and approval by the Department of Public Works, in conjunction with submittal of plans for subdivision review. Drainage improvements shall be constructed or bonded in a manner meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval.
10. A Data Recovery Plan and Preservation Plan shall be prepared for the review and approval by the Planning Director in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD). Proposed mitigation treatment (preservation in place or disinternment/reinternment) for burial sites must be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for subdivision review and prior to any approval for any land alteration permits.
11. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
12. Comply with applicable laws, rules, regulations and requirements of other affected agencies for approval of the proposed development within the subject property, including the Department of Health.
13. An initial 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 applicants, its 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 this permit.
 - 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).
14. Restrictive covenants in the deeds of all proposed residential lots within the subject property shall prohibit Bed and Breakfasts on each lot. A copy of the proposed covenants to be recorded with the Bureau of Conveyances shall be submitted with the plans for subdivision to the Planning Director for review and

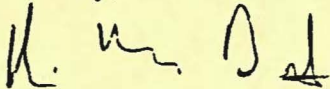
Mr. Sidney M. Fuke
Page 8

approval. A copy of the approved covenant(s) shall be recited in an instrument executed by the applicant and the County and recorded with the Bureau of Conveyances in conjunction with the issuance of Final Subdivision Approval.

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 feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

LGentr01.PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of State Planning, CZM Program (w/Background)
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Department of Health
Mr. Joseph Fadrowsky, III

EFFECTIVE DATE: AUG 20 1997