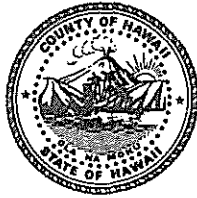


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
Z 095 324 874

DEC 20 1999

Steven S. C. Lim, Esq.
Carlsmith Ball
121 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

Special Management Area Use Permit Application (SMA 99-006)
Applicant: Nohona Partners, Inc., a Hawaii Corporation
Request: Allow for the Development of a 15-Lot Minimum 5-Acre
Agricultural Lots and Related Infrastructure
Tax Map Key: 7-7-004:Portion of 2; 7-7-008:Portion of 27

The Planning Commission at its duly held public hearing on December 2, 1999, voted to approve the above-referenced application. Special Management Area (SMA) Use Permit No. 398 is hereby issued to allow the development of a 15-lot minimum five (5) acres agricultural subdivision and related infrastructure (Ho'omalulu on Alii, Increment II, Phases I and II). The project site is located between the proposed Alii Highway and Kuakini Highway, southwest of Kona Sea View Lots Subdivision and approximately 800 feet north of White Sands Beach Estates Subdivision, Kaunakakai and Pahoeheo 1st, North Kona, 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

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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 applicant is proposing to subdivide approximately 80.00 acres into 15 buildable minimum-five acre lots and associated infrastructure improvements. Each lot will be configured to use the property's natural terrain to full advantage and to maximize buildable areas and view planes. Engineering and construction efforts will be undertaken to minimize necessary grading and reshaping of existing terrain, so as not to adversely impact certain flood designated areas within the property. The lots will be sold in fee, with use and design restrictions included within deed covenants to be recorded for each lot. Subdivision access and interior roadways, drainage and wastewater disposal improvements, and other related infrastructure will be privately owned and maintained, and will be designed and constructed to meet all applicable County requirements. The future Alii Highway forms the makai boundary of the proposed development and will provide a mid-level access way within the Ho'omaluu on Alii Subdivision.

A portion of the Judd Trail traverses the east-to-west length of the property from Alii Drive to Kuakini Highway, and a portion of the Great Wall of Kuakini traverses the north-to-south width of the property mauka of the future Alii Highway. The applicant is not proposing any development within the Judd Trail or the Great Wall of Kuakini, or within the 10-foot buffer corridors on each side of the historic alignments.

The proposed development is located mauka of Alii Drive and makai of Kuakini Highway. Therefore, there would be no adverse impact to recreational and visual resources, access to and along the shoreline nor coastal ecosystems. The property is presently overgrown. Current vegetation on the property is dominated by non-native plants. There are no known rare or endangered plant life or animal species on the property or in its immediate vicinity. The proposed development would not impact the immediate adjacent properties as the subject property is surrounded by single family dwellings and vacant lands. The property is situated adjacent to (southwest) Kona Sea View Subdivision. This subdivision is in the State Land Use Urban District and the County's Single Family Residential-7,500 square foot (RS-7.5), Multiple Family-1,500 square foot (RM-1.5) and Neighborhood Commercial-7,500 square foot (CN-7.5) zoned district. To the east are single-family residences and a number of vacant residential lots Kuakini Heights Subdivision, Keauhou Uka Subdivision and Sunset View Subdivision. The lots within the Kuakini Heights Subdivision and Keauhou Uka Subdivision are essentially 10,000 square feet in size. The lands to the west of the subject property include the White Sands Beach Estates Subdivision which is zoned RS-7.5. Adjacent property to the south is vacant and zoned RS-7.5.

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. The FEMA maps indicate the property is located within Zone X or outside the 500-year flood plain and Zone AE or within the 100-year flood plain by Federal Emergency Management Agency's (FEMA) Federal Flood Insurance Rate Map (FIRM). The Department of Public Works has recommended that a drainage study be submitted to the Department of Public Works in compliance with the Federal Emergency Management Agency (FEMA) regulations. The subdivision construction will alter the Flood Insurance Rate Map (FIRM) boundaries and base flood elevations, therefore a comprehensive flood study and a FEMA Conditional Letter of Map Revision (LOMR) should be completed prior to Final Subdivision approval. If required and upon completion of construction, a FEMA Letter of Map Revision should be obtained. Therefore, a condition of approval will be included to comply with this recommendation. In addition, each of the lots will be sold with use and design restrictions included within deed covenants recorded for each lot.

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. 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 has been performed on the property and submitted for review by the Department of Land and Natural Resources - Historic Preservation Division on August 26, 1999. The study found that remnants of the historic Kona Field System are located within the project area. According to the applicant, the project site has largely been eradicated of its endemic and archaeological features by prior site clearing and grazing activities. The makai portion of the area, which does not include the project area, is believed to have contained a settlement complex referred to as the Kaumalumu Complex, which included a cluster of habitation sites, burial platforms and the Judd Trail. The Great Wall of Kuakini formerly traversed the north-south width of the property mauka of the future Alii Highway. The Judd Trail formerly traversed the east-west length of the property from Kuakini Highway to Alii Drive. The applicant will preserve the Judd Trail and Great Wall of Kuakini. Where only historic alignments can be located, they will be identified and preserved within preservation easements of inlaid rock, with 'no build' buffer zones designated along side each easement. These preservation easements were approved by the Board of Land and Natural Resources on August 28, 1998, in conjunction with its direct sale to the applicant of two 15-foot easements and rights-of-entry over the Judd Trail for Lots 7 and 8 of Ho'omalulu on

Alii-Increment I, Phase II, Subdivision No. 7022-A. The preparation of a historic preservation plan and the establishment of buffer zones and interim protection measures still need 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 conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates the project site as Urban Expansion which allows a mix of high density, medium density, low density, industrial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined and provided all applicable goals, policies and standards of the General Plan can be met.

The proposed use will compliment the following goals, policies and standards of the Land Use 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.
- Protect and encourage the intensive utilization of the County's limited prime agricultural lands.
- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- The compatibility of agricultural and non-agricultural uses should be carefully reviewed and where appropriate, buffers required.
- Rural-style residential-agricultural developments, such as new small-scale rural communities or extensions of existing rural communities, shall be encouraged in appropriate locations.
- The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- Agricultural land shall be used as one form of open space or green belt.

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

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

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 conditions not be met or substantially complied with in a timely fashion, the Director may initiate to revoke this permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall disclose to all potential buyers of lots or units within the proposed project that the subdivided lots are within a designated flood zone and are subject to flooding.
3. Final Subdivision Approval for the proposed development shall be secured from the Planning Department within five (5) years from the effective date of this permit.

4. For the six (6) lots bordering the south boundary of the proposed project, a topographic survey and a drainage study shall be submitted for review and approval by the Department of Public Works. If required by the Department of Public Works, development plans for any driveways and improvements for those six lots within the flood zone shall be submitted to the Federal Emergency Management Agency (FEMA) for review and approval. If improvements are required by the Department of Public Works and/or FEMA to mitigate flooding, all improvements for those six lots shall be completed and/or bonded prior to Final Subdivision Approval.
5. The applicant shall include a deed restriction for all lots in the proposed project limiting housing development on each lot to a maximum of two (2) single family and/or farm dwellings.
6. A 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). A copy of the approved Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for subdivision approval review or prior to any approval for any land alteration permits, whichever occurs first.
7. Prior to construction or any land alteration activities occurring within the subject property, the 15-foot setback from the Kuakini Wall and 10-foot setback from the Judd Trail shall be measured, staked, and roped with a continuous flagline by an archaeologist. The West Hawaii Planning Department Office shall be notified to conduct a site inspection of the subject property to verify the location of the flagline prior to commencing any construction or land alteration activities and subsequently, after completion of the single family dwelling. The flagline shall be left in place for the duration of construction activities within the subject property.
8. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks 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.
9. 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

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of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

10. 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.
 - 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).

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 Eleanor Mirikitani of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Leonard S. Tanaka, Chairman
Planning Commission

Lnohona01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of Planning, CZM Program (w/Background)
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Norman Hayashi
Mr. Jeffrey Darrow
Mr. Jon Gomes