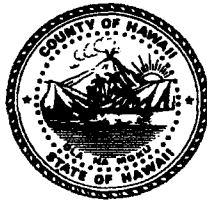


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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Fax (808) 961-8742

August 30, 2017

Mr. Dennis Moresco, Managing Partner
Clifto's Kona Coast, LLC
7305 Morro Road, Suite 207
Atascadero, CA 93422-4445

Dear Mr. Moresco:

Subject: Status of SMA Use Permit No. 442 (SMA 442)

**Request: Development of a Commercial/Residential Complex Consisting of Offices,
Retail Uses, Multi-Family Housing and Facilities for Transient Accommodations
Tax Map Key: 7-3-009:022**

A recent request for information on the subject parcel prompted Planning Department staff to review the status of land use applications and entitlements that affect the property, including the subject SMA Use Permit.

SMA Use Permit No. 442 was approved by the Planning Commission on December 30, 2003, but never went into effect as it was conditionally tied to an accompanying Project District Application (REZ No. 03-010) that was never adopted into an ordinance. Condition No. 2 of the SMA Use Permit reads, "*The effective date of the Special Management Area Permit shall be the effective date of the Project District Ordinance.*"

REZ No. 03-010 was approved by the Hawai'i County Council in 2004, but was subsequently vetoed by the Mayor. The Hawai'i County Council could not muster sufficient votes to override the veto, and thus the proposed ordinance for requested Project District zoning failed. In short, in the absence of a Project District ordinance, the subject SMA Use Permit never went into effect.

A thorough review of our records did not find any prior correspondence to you articulating the status of SMA Use Permit 03-005, so we are correcting that oversight with this letter. Any future development on the subject property will need to be assessed by this office in order to determine the proper and necessary land use designation(s) and permitting requirements.

SEP - 1 2017

Mr. Dennis Moresco, Managing Partner
Clifto's Kona Coast, LLC
Page 2
August 30, 2017

If you have any questions, please feel free to contact Christian Kay at 961-8136.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Yee". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Yee".

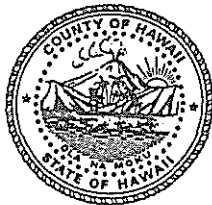
MICHAEL YEE
Planning Director

CRK:mad

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cc: Kona Planning Office
Gilbert Bailado, GIS Section

Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

December 30, 2003

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

Dear Mr. Fuke:

Applicant: Clifto's Kona Coast LLC
Special Management Area Use Permit Application (SMA 03-005)
Request: Development of a Commercial/Residential Complex Consisting of Offices,
Retail Uses, Multi-Family Housing and Facilities for Transient Accommodations
Tax Map Key: 7-3-09:22

The Planning Commission at its duly held public hearing on December 4, 2003, considered your request for reconsideration on the action taken on the above-referenced application to allow the development of a commercial-residential complex consisting of offices, retail uses, multi-family housing, facilities for transient accommodations, and related improvements. The Commission voted to approve the above-referenced application and issue SMA Permit No. 442. The property is located along the west (makai) side of Queen Ka'ahumanu Highway (State Highway 19), approximately 2,100 feet south of the Queen Ka'ahumanu Highway – NELHA Access Road, Ooma 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205A, Hawaii Revised Statutes, and Rule 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 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

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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 requesting a Special Management Area Use Permit to develop a commercial-residential complex consisting of office, commercial, retail uses, multi-family housing, hotels and related improvements:

- Office/commercial - 155,000 square feet on approximately 18 acres.
- Retail/commercial - 237,000 square feet on approximately 23 acres.
- Multi-family housing - 240 one, two and three bedroom units ranging in size from 600 to 1,200 square feet, on approximately 21 acres. Increments of the multi-family portion of the project will include recreational amenities such as swimming pools and recreation centers, and the visitor facilities will also contain on-site recreational amenities.
- Transient accommodations - 400 rooms, to include a maximum of three small hotels to cater to different markets (airport business hotel, all suites, long term efficiency), on approximately 12 acres.
- Open space and park space.

The applicant's overall objective is to provide services and retail shopping opportunities to businesses and residents in the region, and to provide housing opportunities for NELHA and employees of the future West Hawaii Campus of the University of Hawaii, as well as to provide accommodations for visitors to these facilities.

As noted in the application and the applicant's testimony, the existing General Industrial (MG-3a) zoning is not consistent with the growth patterns and marketing trends of this area. The proposed development, with its multiple uses, would be more consistent with the existing and evolving land uses of this region.

During the course of implementing this project, mitigation measures required as conditions of this approval will be implemented to minimize potential impacts of this project. As such, there will be no significantly adverse environmental or ecological impacts associated with this project. This conclusion is supported by studies contained in the application and the absence of any documented evidence to the contrary before the Planning Commission on this application. Surveys and/or studies conducted by the applicant relating to the area's biological resources, groundwater resources, historic and

cultural resources, visual impacts, public access and recreation aspects, socio-economic impacts support this conclusion:

- The Federal Emergency Management Agency's Flood Insurance Rate Map (FIRM) Map designates this area as Zone "X", areas determined to be outside the 500-year flood plain. Although the shoreline is about .6 to .9 miles from the shoreline, the site falls within the Civil Defense Tsunami Evacuation zone. The applicant will be required to prepare an evacuation plan.
- The U.S. Geological Survey (USGS) classifies the area - which includes Kailua-Kona - as Lava Flow Hazard Zone 4, on a scale of ascending risk 9 to 1. By way of reference, the City of Hilo is located within Zone 3, while the lower Puna area ranges between Zones 1 and 2. This is a phenomenon that cannot be avoided in this area.
- The Building Code designates the entire island of Hawaii in Earthquake Zone 4 and contains certain structural requirements to address the relative seismic hazards. All structures will be constructed to address these higher seismic standards.
- The soil on the project site is classified as Pahoehoe and A'a lava and the Land Study Bureau's Productivity Rating is "E" or "Very Poor". The project site has little, if any value for agricultural production.
- According to a Botanical Resources Assessment Study conducted by Char and Associates in November, 2002, none of the plants on the project site is a threatened or endangered species. Although the *maiapilo* and *Fimbristylis* were found on the project site, they are considered "species of concerns" and do not receive any legal protection. The other common vegetation on the parcel is dominated by introduced fountain grass, tress and shrubs which include *kiawe*, *koa haole* and native *pili* grass. Native plants, including the *maiapilo* and *Fimbristylis* will be incorporated into the landscaping. As such, the proposed uses are not expected to have a significant negative impact on the botanical resources of the site.

- According to an avifaunal and feral mammalian species survey conducted by Phil Bruner, Environmental Consultant in October, 2002, no known federally listed threatened or endangered faunal species were present on the site. Birds and mammals on the site were typical of the type of habitat in West Hawaii. The study concluded that there will be no significant impacts to any native or migratory species of birds or mammals.
- In December, 2002, Tom Nance Water Resource Engineering conducted an analysis of the impact of the project on the groundwater. The results of the study suggested that the overall volume of groundwater discharged to the shoreline fronting O'oma will increase by 1.8% and the increase to the three-mile section of shoreline directly downgradient of the project site for nitrogen and phosphorus is estimated to be 1.5% and 7.1%, respectively. According to the study, due to high permeability of the natural ground surface across the project site and on the upslope lands, surface runoff does not occur even during the most intense rainfalls. As a result, no natural gulches or waterways for surface runoff have been formed. Mitigative measures to protect the groundwater directly relate to the marine environment and ocean water quality. These include erosion control during construction as well as long-term operational measures such as the use of Integrated Pest Management, managed fertilizer and pesticides applications and monitoring of the groundwater.
- According to a Marine Environmental Assessment of the marine community structure conducted by Marine Research Consultants in December, 2002, "in general, the coral communities off O'oma are typical of the type that occurs throughout much of the West Hawaii coastline. Reef fish community structure at O'oma is fairly typical of the assemblages found in undisturbed Hawaiian reef environments. Stresses from natural forces that are presently the dominant factors in influencing community structure appear to be substantially greater than those that could result from shoreline development. Secondary impacts associated with changes to water quality from changes to groundwater chemistry associated with development do not present the potential for changes based on estimates of changes to groundwater dynamics that will result from the project. In addition, similar existing projects that have been monitored for decades reveal no changes to marine environmental quality."
- Another Marine Environmental Assessment on Water Chemistry conducted by Marine Research Consultants in December, 2002 concluded that "overall, results of the water chemistry analysis indicate that presently

there does not appear to be any unusual material inputs or chemical processes occurring in marine waters directly off the 'O'oma II site. Changes of land use associated with the project should not change water quality of the offshore area to any discernible extent." A single anchialine pond is located near the southern boundary of the property. At present, there is very little exposed water in the pond at low tide, and the pond bottom is lined with sediment. The pond is presently in the final stage of senescence, and will soon be entirely filled in. Such in-filling is part of the natural progression of anchialine ponds in Hawaii. The applicant states that Best Management Practices will be implemented during grading, construction, and landscape activities.

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 proposed development will incorporate specific measures to prevent any adverse impact to the surrounding environment. The temporary effects of noise, dust and runoff which may be generated during construction activities can be controlled utilizing current construction practices and compliance with applicable construction regulations.

Recreational Resources: The proposed development should not have any adverse impact to the recreational resources of the area. The property is not a coastal property, its nearest point being .6 miles from the shoreline. There is a parcel located between the subject property and the ocean. The public uses the area *makai* of the lower parcel for lateral access along the shoreline. Development of the project site will not interrupt this lateral access, affect coastal processes, or damage any coastal resources having significant recreational value. A *mauka-makai* roadway is planned through the project site which could provide the beginnings of a legal *mauka-makai* access to the shoreline through this area. Furthermore, the project will provide on-site open space and passive recreational areas.

Historical and Cultural Resources: Archaeological studies were conducted of this area. The most recent study, which also included a cultural impact assessment, was performed by Robert Rechtman of Rechtman Consulting with Kefa Maly in February, 2003. The study confirmed the presence of two significant resources within the proposed development area - the 1847 Mamalahoa Trail/King's Highway (SIHP Site 2) and a habitation cave associated with the Mamalahoa Trail (SIHP Site 10155). Data recovery of these sites has already been completed, and the historic sites will be preserved with appropriate buffers during and after the construction period. Interpretive, as well as cautionary signage will be established to both educate and inform the public about the cultural significance of the resources and possible penalties for damage to the resources. The applicant will also be required to prepare a Preservation Plan for the two sites.

As noted earlier, the two features on the site will be preserved. Finally, there is no visible evidence that the site has been used for gathering of native plants for medicinal or food, particularly as the site is somewhat devoid of substantial vegetation. However, if legitimate claims are made, access will be provided. As such, the development of this site should not have any adverse impacts to native Hawaiian cultural or religious practices.

Scenic and Open Space Resources: The site is located *makai* of the Queen Ka'ahumanu Highway. As the site is vacant of any structures, the natural appearance will be altered. However, as noted in the applicant's visual analysis of this project, its development should not significantly impair the views of the shoreline. This is due in part to the slope gradients and vegetation that presently obscure the nearshore waters. Furthermore, the proposed development is not anticipated to exceed 40 feet in height, unlike the 50 feet that is currently allowed in the industrial zone. There will also be mitigating design measures, such as landscaping and the break up of buildings rather than one monolithic structure. Additionally, there will be a 150-foot non-structural setback from the Queen Ka'ahumanu Highway, which already has a 300-foot right-of-way that extends 190 feet from its makai edge. Many of these design mitigation will be made as conditions of this approval, and as such, this project should not significantly adversely impact any scenic coastal resources.

Coastal Ecosystem: The project site is nearly a mile from the shoreline, with its closest point situated over ½ mile from the shoreline. Accordingly, any immediate, direct interaction between the proposed improvements and the coastal water should not be excessive, if at all. Although the structures and roadways may increase the volume of rainwater, they will be directed into on-site drywells and away from the ocean. 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.

A private wastewater system meeting with the State Department of Health will also be provided on-site. Additionally, as noted by the Department of Environmental Management, should the system be integrated into the County's system, there would be adequate capacity at the Kealakehe Wastewater Treatment Plant to treat the projected flows from the proposed project. The Department of Environmental Management also supported the applicant's reference to participate in the proposed North Kona Improvement District currently deferred at the County Council. Finally, there will also be conditions attached to this permit that extend beyond the normal requirements to further address potential groundwater and nearshore water impacts.

Economic Uses: The community and government, in its Keahole to Kailua development Plan and County General Plan, acknowledge the urban setting of this region, with this area being suitable for Ocean Research/commercial/Industrial and Resort/Recreation activities. In so doing, according to the economic analysis provided in the application, the project would represent nearly \$280 million spent in the State over the next 13 years. This would also translate directly to some 140 full-time equivalent Hawaii-based jobs in an average year. The anticipated direct and indirect employment generated by this project should approach 300 jobs.

Coastal Hazards: Although the site is designated Zone "X" on the Flood Insurance Rate map, it still falls within the Civil Defense Tsunami Evacuation Zone. However, with the advance early warning systems and the required Emergency Evacuation Plan, there should be adequate provisions to address impacts from tsunami (with the exception of locally generated tsunamis). As the site is not located adjacent to the shoreline and nearly a mile away, normal winter storm runoff should not be an issue for this project.

Managing Development: This function is more applicable to the "authority" or approving agency which is the Planning Commission. In this situation, the Planning Director finds that this request is intended to operate within the confines of the requested Project District zoning, except as may be modified through any conditions of approval. All of the uses and related development criteria would be articulated in the zoning conditions. This development would hence be consistent with the requested Project District zoning and would be consistent with the policy of "using, implementing, and enforcing existing law effectively to the maximum extent possible in managing present and future coastal zone management."

Public Participation: There is a statewide public advisory body called Marine and Coastal Zone Advisory Committee (MACZAC) that has the task, among other matters, of advising the lead agency (Office of State Planning) on coastal management issues. This includes a direct or indirect review of certain requests that may have statewide coastal zone management implications. Public participation in the review of the permitting process has also been achieved through the use of sending notices to surrounding property owners of the submittal of the rezoning and SMA applications; sending another separate notice informing owners of the date of the Planning Commission's required public hearing as well as the rights to request for participation via a contested case hearing for the SMA application; and the three public hearings on this matter.

Beach Protection: The subject property is not a coastal property, with its closest point being over ½ mile from the shoreline. As such, no erosion protection measures are being proposed. Thus, the policies and objectives on beach protection do not directly relate to this application.

Marine Resources: These are directed more toward agencies charged with the management of coastal resources. Notwithstanding that fact, however, studies conducted by the applicant have addressed the causal relationships between storm water runoff and marine water quality and habitat preservation. These studies will add to the body of understanding of this issue.

Additionally, mitigating measures will be taken during the construction and post-construction period of this project. Erosion control measures meeting with the requirements of the State Department of Health and County Department of Public Works will be developed and implemented, particularly during the construction period. Drywells with additional mitigation as may be required through conditions of the Project District and this permit while still meeting with the Underground Injection Control (UIC) requirements of the State Department of Health will be used to help address potential impacts from surface runoff after the project is completed. Drainage will be directed to the landscaped areas within the project site, including the road rights-of-way, to further minimize the velocity and volume of surface runoff going into drywells.

The proposed development is consistent with the County General Plan and Zoning Code. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals, policies, standards and courses of action. The LUPAG Map designates the project site as an Urban Expansion Area. This designation allows for a mix of high density, medium density, and low density urban developments, 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. In this situation, the proposed development with its mixture of residential and commercial uses would be consistent with the Urban Expansion Area designation of the LUPAG map.

The proposed development would implement and conform to, among others, pertinent portions of the goals, policies, standards and courses of action of the General Plan policy document. Inasmuch as the project's relationship to other elements of the General Plan are contained in the aforementioned discussions relating to the project's consistency with the SMA objectives and policies, this discussion is limited only to the Land Use, Economic, and Housing elements. The General Plan document identifies the Keahole-O'oma area as an urban center. The proposed uses would help implement this land use objective. Additionally, the needed infrastructure would be provided by the project developer. These include improvements to the intersection of the project with the Queen Ka'ahumanu Highway, water system, wastewater system, and related infrastructure improvements. Additionally, the applicant will allow for additional parties to utilize this access, thus creating an opportunity to minimize access points to the Queen Ka'ahumanu Highway. The applicant will be required to participate in a regional traffic assessment program on a pro rata basis.

The project would also generate a number of short and long term employment. It is anticipated that nearly 300 full-time opportunities would be directly or indirectly created by this project. Housing will also be made available in an area that is proximate to places of employment and major recreational areas.

The proposed development would be consistent with the requested Project District zoning. The Project District zone is intended to provide for a flexible and creative planning approach rather than specific land use zone designations. It will also allow for flexibility in locating specific uses and mixes of structural alternatives. The planning approach would establish a continuity in land uses and designs while providing for a comprehensive network of infrastructure facilities and systems. A variety of uses as well as open space, parks, and other project uses are intended to be in accord with each individual Project District objective.

In this situation, the project offers a variety of land uses including residential, commercial, transient accommodation, and open space/recreational uses over 83 acres of land that would be developed in excess of 10 years. Accordingly, having rigid zoning lines to fix the various uses at this time would not be feasible. The Project District zoning allows for this land use flexibility, subject to certain design parameters, some of which are contained as conditions of this permit.

At the same time, development caps are established to help assess the project's impacts to the area's infrastructure, surrounding area, community or region. Appropriate mitigation will be required as conditions of the Project District zoning, as well as this permit. Except as may be modified by the appropriate conditions of the Project District rezoning, all other aspects of the Zoning Code will be complied with.

This approval only covers the 83-acre O'oma mauka parcel, which proposes development oriented towards the Queen Ka'ahumanu Highway. Any development of the 217-acre O'oma makai parcel will require other approvals, including State Land Use redistricting and County rezoning. The coastal property has other environmental issues and concerns that are different than the 83-acre mauka parcel.

Regarding findings with respect to traditional and customary Hawaiian rights:

- Investigation of valued resources: The applicant presented the following information from which the Planning Commission and County Council can determine the valued cultural, historical, and natural resources within the area sought for rezoning: archaeological reconnaissance survey; oral history of kamaaina accounts of the area; historical survey of documentary records; botanical study; and fauna study.

- The valuable cultural, historical, and natural resources found in the rezoning area: The Mamalahoa Trail, a cave shelter, SHPD site no. 10155, and a few plants that are culturally used by Hawaiians: maiapilo, used medicinally, and pili grass, used for thatching, appear to be the major cultural, natural, and historic resources found in the rezoning area. There are also some specimens of Fimbristylis, plant that is a “species of concern”, but not on the endangered or threatened list. There was no evidence that these plants are particularly sought out or used from this area.
- Possible adverse effect or impairment of valued resources: The setting of the Mamalahoa Trail would be changed from the present condition of a relatively natural setting to one where modern buildings would be fairly close. Native plants could be destroyed by construction and ground alteration.
- Feasible actions to protect native Hawaiian rights: Conditions of approval will protect the Mamalahoa Trail and cave shelter from physical destruction. The Mamalahoa Trail experience can be protected by substantial buffers of natural lava and a no-build setback. Native plants can continue to grow within the natural lava setback of the Mamalahoa Trail (50 feet on either side) and within the 150-foot setback from the Queen Ka‘ahumanu Highway.

Based on the above findings, the Planning Director determines that the proposed development is consistent with objectives, policies and guidelines of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area:

- A. The proposed project will not have any substantial, adverse environmental or ecological effect. Any effect that may result will be minimized to the extent practicable and through conditions of approval of this permit. Further, this development will not generate any adverse effects by themselves or in conjunction with other individual developments, the potential cumulative impacts of which would result in a substantial adverse environmental or ecological effect and the elimination of planning options. Appropriate mitigating measures will be taken to address any potential adverse impacts of this project;
- B. The proposed uses are consistent with the objectives, policies, and guidelines of the SMA Rules and Regulations;
- C. The proposed development is consistent with the County General Plan, Keahole to Kailua Plan, and the County Zoning Code.

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

1. The applicant, successors, or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The effective date of the Special Management Area Permit shall be the effective date of the Project District Ordinance.
3. The applicant shall comply with all applicable conditions of the accompanying Project District Ordinance affecting the subject property.
4. This project area shall be called the O'oma Project District.
5. The O'oma Project District shall consist of not more than 83 acres for multiple-family residential, office and retail commercial, transient accommodations (hotels), open space, and ancillary related development.
6. The proposed development shall not exceed a maximum number of 240 multiple-family residential units, 400 transient accommodation rooms, and 392,000 square feet of commercial office/retail space.
7. The uses permitted in Section 25-6-43, Chapter 25 (Zoning Code), Hawaii County Code, will be allowed in the O'oma Project District, except that golf courses or portions of golf courses and major outdoor amusement and recreational facilities shall not be allowed without a Use Permit, because the potential impact of these uses was not analyzed in the application and are not in the master plan submitted with the application.
8. Construction of the proposed development shall be completed within ten years from the effective date of the Project District Ordinance. Final Plan Approval by the Planning Director in accordance with the Zoning Code shall be secured by the applicant prior to the commencement of construction. Development plans shall identify existing and proposed structures, fire protection measures, paved driveway accesses and parking stalls, and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
9. Construction of the multiple-family residential units, office and retail commercial development, hotels, and other related improvements shall commence only after Final Plan Approval has been secured from the Planning Director.

10. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
11. There shall be a 150-foot wide open space fronting Queen Ka‘ahumanu Highway. No multiple-family residential, office or retail commercial or hotel uses shall be allowed within the 150-foot wide open space. A copy of the metes and bounds description for this open space area, and proposed covenant(s) shall be submitted to the Planning Director for review and approval prior to receipt of Final Plan Approval or land alteration activities, whichever occurs first. The approved covenant(s) shall be recorded in the Bureau of Conveyances prior to the issuance of Final Plan Approval, or land alteration activities, whichever occurs first. A copy of the recorded covenant(s) shall be provided to the Planning Department.
12. To avoid creating a scattered, strip development pattern along the Queen Ka‘ahumanu Highway, development shall proceed incrementally, and the initial development increment shall consist of a minimum of 30,000 square feet of gross floor space in commercial and/or office use, or not less than 60 residential units, or not less than 60 hotel units. Actual construction under a bona fide construction contract of the initial development increment shall begin not more than four (4) years of the approval of this SMA Use permit, and shall be completed within two years of commencement.
13. The following design standards shall apply:
 - A. Landscaping for the development shall comply with the Planning Department’s Rule No. 17, Landscaping Requirements.
 - B. The maximum allowable height limit for all multiple-family residential, office and retail commercial, and hotel developments shall be two stories, to a maximum of 40 feet as represented in the applicant’s county environmental report, and the ground surface shall not be elevated or altered in a way that substantially increases the visibility of the project site from the analysis contained in Figure 13 of that report.
 - C. The minimum yards (setback) shall be as follows:
 - (1) Multiple-Family Residential Development
 - a. Front and rear yards, twenty feet; and

- b. Side yards, eight feet for a one-story building, plus an additional two feet for each additional story.
 - (2) Office and Retail Commercial Development
 - a. Front and rear yards, fifteen feet; and
 - b. Side yards, none, except where the adjoining site is a multiple-family residential or hotel development site. Where the side yard adjoins the side yard of a multiple-family residential or hotel development site, there shall be a minimum side yard of eight feet for a one-story building, plus an additional two feet for each additional story.
 - (3) Hotel Development
 - a. Front and rear yards, twenty feet; and
 - b. Side yards, eight feet for one story, and an additional two feet for each additional story.
- D. A minimum of 35% of the total project area shall be open space. The "open space" shall include the 150-foot highway buffer, Mamalahoa Trail buffer, and other open areas outside of the building footprints, but parking areas, except for landscaping, shall not be counted as open space.
- E. The minimum off-street parking and loading space requirements of the Chapter 25, Hawaii County Code shall be complied with, including compliance with the American Disabilities Act (ADA) requirements.
- 14. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, anti-freeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.
- 15. All employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial liquid spills onto bare ground.

16. Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed along with the local fire code).
17. Conditions 14, 15, and 16 shall be contained in covenants in deeds to all lots, except those to individual dwelling units.
18. All wastewater shall be treated at an approved wastewater treatment plant, to a minimum of secondary treatment, with R-2 effluent, unless a greater level of treatment is required by the Department of Health. Wastewater shall be used for irrigation of landscaping or other beneficial reuse to the maximum extent feasible.
19. The applicant shall provide assurance satisfactory to the Department of Water Supply and the Planning Director, upon consultation with the Department of Health and Department of Land and Natural Resources, that water sources of sufficient quality and quantity has been established. Satisfactory assurance can be met by the actual drilling and testing of a well site of the water source or by the submittal of a hydrological study certifying that water sources of sufficient quality and quantity can be established at a designated location. Upon compliance with this condition, the actual development of the water source and its water transmission and distribution system shall be developed prior to occupancy.
20. All project utilities shall be underground. Applicant shall make a good-faith effort to obtain permission from the Department of Transportation to underground the main utility line crossing of the Queen Ka'ahumanu Highway.
21. All internal roadways and the main access road shall be constructed in accordance with the requirements of the Department of Public Works, to dedicable standards, except for cul-de-sac roads serving residential areas only, to the extent permitted by the Subdivision Code, and shall be dedicated to the County upon request at no cost to the County. On private roads, any vehicular security gate shall be set back from collector streets to allow for storage of vehicles and a turnaround on the collector street side of the gate, meeting with the approval of the Department of Public Works.
22. Only one access on the property from Queen Ka'ahumanu Highway shall be allowed, meeting with the approval of the Department of Transportation

Highways Division. The project area may have a secondary access or accesses to the Queen Ka'ahumanu Highway by connection to other properties.

23. To facilitate interconnectivity and to coordinate access to the Queen Ka'ahumanu Highway, applicant shall allow the properties to the south (TMK 7-3-09:003, 014, 016, and 018, hereinafter referred to as the "southerly properties") and to the west (TMK 7-3-09:004, hereinafter referred to as the "O'oma makai property") to connect to its main access road, and shall allow connection to the NELHA property to the north. Unless disapproved by the Department of Transportation, the southerly properties and the O'oma makai property shall be allowed to use the applicant's access intersection on the Queen Ka'ahumanu Highway as their main access point.
24. The applicant shall permit the owners of any of the southerly properties and the O'oma makai property to construct the necessary intersection improvements and access road improvements on applicant's property if they are ready to develop before the applicant. The party constructing the intersection and access road improvements (including the applicant) shall be entitled to partial reimbursement from any other landowner using the intersection and access road as its primary access to the Queen Ka'ahumanu Highway. Reimbursement shall be paid prior to the other landowner's actual use of the intersection to serve urban development. Reimbursement by the owner of TMK 7-3-009:003 or 016, or by the applicant, shall be 50% of the basic cost of full channelization of the intersection, plus 50% of the shared portion of the access road. Reimbursement by TMK 7-3-009:004, 014, and 018, that are currently in the State Land Use Conservation district and do not currently have known development plans, shall be pro rata, based on their projected usage at the time they commence actual usage for urban development, provided that public shoreline access usage shall not be included in the calculation. The applicant shall be entitled to a credit for any reimbursement for the value of its property used for the access road, and shall be entitled to appropriate protection against liability by any party constructing improvements on its property. The right of reimbursement shall expire ten (10) years after the completion of construction of the initial intersection. These provisions for reimbursement can be modified by private agreement between or among affected landowners.
25. The applicant shall contribute its pro rata share to the Department of Transportation to regional road improvements consisting of the following projects: (1) the widening of the Queen Ka'ahumanu Highway to four lanes, from Kealakehe Parkway to the project intersection, and (2) improvements to the intersection of the Queen Ka'ahumanu Highway and Hina Lani Street. The "pro rata share" shall be the portion of the traffic attributable to the project to the total

traffic on Queen Ka'ahumanu Highway or the Hina Lani intersection. The pro rata share shall be determined by the Planning Director in consultation with the applicant and the Department of Transportation, and shall be paid prior to plan approval or final subdivision approval for the first development increment, whichever comes first, and prior to plan approval or final subdivision approval for each successive development increment.

26. The applicant (or others, as stated in Condition 24) shall construct improvements to its project intersection meeting with the approval of the Department of Transportation prior to occupancy of any structures. If the occupancy occurs before the expansion of the Queen Ka'ahumanu Highway to four lanes, and the Department of Transportation permits left turn lanes into the property, the improvements shall consist of, at a minimum, a fully channelized intersection with a dedicated right-turn lane, left-and right-turn merge lanes, and a left-turn storage lane, all meeting with the approval of the Department of Transportation. Conduits for installation of signal lights shall be installed with the initial construction of the intersection to avoid disrupting traffic during a future installation, unless otherwise approved by the Department of Transportation.
27. The applicant shall retain 50-foot wide undisturbed buffers of natural lava along both sides of the Mamalahoa Trail (measured from the edges of the trail) and additional 60-foot buffers without structures, unless the Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) recommends a wider buffer in the Preservation Plan.
28. The Mamalahoa Trail shall not be breached, except where crossed by the existing jeep road, without permission from the state of Hawaii.
29. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to issuance of a Certificate of Occupancy.
30. A Solid Waste Management Plan shall be prepared and submitted for approval to the Department of Environmental Management prior to submitting plans for Plan Approval review. Approved recommendations and mitigation measures shall be implemented in a manner meeting with the approval of the Department of Environmental Management.

31. An Emergency Response Plan shall be submitted to the Civil Defense Agency for review and approval, prior to the issuance of a Certificate of Occupancy.
32. An archaeological preservation plan shall be prepared and submitted for review and approval by the Department of Land and Natural Resources Historic Preservation Division prior to receipt of Final Plan Approval. The archaeological preservation plan shall address the Mamalahoa Trail and associated habitation cave and ensure that they are not damaged by construction activities.
33. If mauka-makai public shoreline access is established through TMK 7-3-009:003 or 004 as a condition of any land use approval, the applicant shall allow use of its project access road for public access to connect to the makai public shoreline access upon request of the county.
34. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it is found that sufficient mitigation measures have been taken.
35. The applicant shall conduct a water quality monitoring program. The applicant's participation can be satisfied by monitoring done by NELHA and/or the owners of TMK 7-3-09:003 (Kohanaiki) and/or TMK 7-3-009:004 (O'oma makai property) if adequate sampling is done on the coast fronting TMK 7-3-009:004, and applicant pays a fair share based on relative acreage.
36. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. The fair share contribution shall be initially based on the representations contained within the change of zone application and may be increased or reduced proportionally if the lot or unit counts are adjusted. The fair share contribution for each lot or unit shall be based on a maximum density for each lot or unit as determined by the zoning resulting from this change of zone. The fair share contribution shall become due and payable incrementally as the proposed development is built out. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair share contribution, the applicant may contribute land, and/or construct improvements/facilities related to parks and recreation, fire, police, solid

waste disposal facilities and roads within the region impacted by the proposed development, subject to the approval of the appropriate agency(ies). Any contributions required by this ordinance that exceed the fair share requirement of this proposed development shall, at the applicant's request be credited towards any of the applicant's future developments that require infrastructural impact contributions.

37. The applicant shall comply with all affordable housing requirements contained in the Project District ordinance.
38. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
39. The applicant shall comply with all conditions of approval of the State Land Use Commission's Decision and Order (Docket No. A85-592) dated February 6, 1986, and as amended on May 19, 1992 and the accompanying Project District ordinance.
40. Comply with all other applicable laws, rules, regulations and requirements of other affected agencies.
41. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of approval of the accompanying Project District Ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Director acknowledges that further reports are not required.
42. An initial extension of time for the performance of conditions within this 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 this permit.

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- (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).
- (e) 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.

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 Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

Lclifto's02PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Office of Planning, CZM Program (w/Background)
Planning Department - Kona
Department of Land and Natural Resources-HPD/Kona
Rodney Haraga, Director/DOT-Highways, Honolulu
Ms. Alice Kawaha
Mr. Robert Usagawa
Plan Approval Section
Mr. Cliff Morris