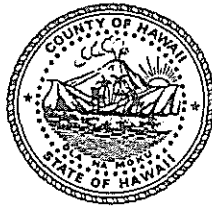


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

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

June 18, 2004

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

Dear Mr. Mooers:

Special Management Area Use Permit Application (SMA 04-002)
Applicant: Construct a 2-Story Office Building and Related Improvements
Request: Edward Rapoza
Tax Map Key: 7-5-18:94

The Planning Commission at its duly held public hearing on May 28, 2004, voted to approve the above-referenced application. Special Management Area (SMA) Use Permit No. 446 is hereby issued to allow the construction of a 2-story office building and related improvements. The property is located between Walua Road and Kuakini Highway, approximately 1,050 feet northwest of the Walua Road – Lunapule Road junction, Waiaha, North Kona, Hawaii.

Approval of this request is based on the following:

The proposed 15,438-square foot two-story office building and related improvements 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 applicant proposes to develop an approximately 15,438-square foot two-story office building, which will include six suites, parking and landscaping. The project cost is estimated at \$2,000,000.00.

The proposed project will not create significant adverse impacts upon immediately adjacent properties as lands to the north and south are zoned Village Commercial (CV-10), and the property west (makai) of the site, which is the Alii Cove

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200-unit multi-family complex, is zoned Multiple-Family Residential (RM-4). Mauka of the site is the U of N Bencorp's proposed multiple-family dwelling complex, cultural and educational center, on land zoned A-1a. U of N Bencorp has submitted a Change of Zone application to accommodate its proposed development. The proposed development will not substantially affect scenic vistas or viewplanes of nearby residents nor have an adverse impact on coastal recreational or visual resources to the shoreline and coastal ecosystems. The subject property is located mauka of Alii Drive approximately 800 feet from the shoreline; therefore, the proposed project will neither restrict access to coastal recreational resources along the shoreline nor will it restrict existing visual viewplanes. The viewplane from the shoreline towards the property will not be impacted as the property makai of the subject property is developed with the Alii Cove 200-unit multiple family residential project.

Air quality in the area of the subject property is mostly affected by emissions from natural and vehicular sources. The principal source of both short-term air and noise quality impacts associated with the construction of the proposed improvements are expected during construction, especially during grubbing and grading activities. These impacts can be mitigated through the utilization of best management practices. Given the limited nature of the improvements, no significant long-term air and noise quality impacts are anticipated.

The proposed project 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 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.

County water is available through an existing a 5/8-inch meter. As the Department of Water Supply requires the installation of a back flow preventer by a licensed contractor, a condition of approval will be included to reflect the Department of Water Supply's request. The applicant will be required to connect to the County wastewater system. Any potential runoff or discharge that could reach ocean waters can be handled by on-site improvements consistent with the requirements of the Department of Public Works. The applicant will be required to submit a grading, drainage and erosion control plan and drainage report to the Department of Public Works, prior to the issuance of a building or grading permit. They also require that the existing drainage easement along the southern boundary shall be maintained free of obstructions for offsite stormwater flow. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing

regulations and proper construction practices. Air emissions generated during the construction phase for the proposed project can be mitigated by existing construction regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects upon nearby coastal resources or the surrounding environment. Additional conditions of approval will be included relating to wastewater, solid waste and public safety to ensure that impacts on coastal resources are minimized.

According to the Department of Land and Natural Resources Historic Preservation Division's April 2, 2004 letter, "this project has already gone through the historic preservation review process, and mitigation has been completed. Thus, we believe that no historic properties will be affected by this undertaking." No historic features will be impacted by the proposed office structure.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site. As stated above, the project has gone through the historic preservation review process and mitigation has been completed. Therefore, at this time, no action is necessary to protect these rights. There is no record of a designated public access to the shoreline or mountain areas that traverses the property. The property is located approximately 800 feet from the shoreline and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area.

The proposed development is consistent with the County General Plan and Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Medium Density Urban, which allows village and neighborhood commercial and residential and related functions (3-story commercial; residential - up to 35 units per acre). The subject property is zoned Village Commercial (CV-10) by the County.

This proposed development will complement the goals, policies and standards of, among others, the Land Use and Economic Elements of the General Plan. The proposed development will add to the commercial office space inventory for the district of North Kona. This project will be in harmony with the character of the surrounding neighborhood and result in an intensity of land utilization no higher than as permitted or as otherwise specified for the district in which this proposed development occurs.

While the proposed development will not have a direct impact upon coastal recreational resources, review of developments within the Special Management Area must also consider the cumulative impacts of such developments upon these resources.

According to the applicant, the traffic impacts will remain minimally impacted and the use of the shared driveway easement as required by the Department of Public Works during the subdivision of the property has relieved any significant traffic impacts.

Access to the property is from Walua Road, a County roadway. The Department of Public Works requires that the existing sight distance easement on the property be maintained, and recommends that Walua Road be improved to a 60-foot right-of-way as identified in Change of Zone Ordinance No. 03 18 (REZ 996) on TMK: 7-5-018: 008 which required the widening and improvement to the mauka side of Walua Road with curb, gutter and sidewalk. DPW states that the applicant should be required to cooperate with fulfillment of the Walua Road improvements required under Ordinance No. 03 18 for right-of-entry and necessary property acquisition. Therefore, these requests will be added as conditions of approval.

The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. While the proposed development will not have a direct impact upon coastal recreational resources, review of developments within the Special Management Area must also consider the cumulative impacts of such developments upon these resources. In view of the recent Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed. These rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: The applicant presented the following information from which the Planning Commission can determine the valued cultural, historical, and natural resources within the area sought for Special Management Area Use Permit:

- A Botanical Reconnaissance of the site was conducted in November of 2003, by Ron Terry, Ph.D.
- An Archaeological Inventory Survey conducted by Paul H. Rosendahl, Ph.D. in 2001.
- An Archaeological Data Recovery Plan conducted by Haun & Associates in September of 2001 and approved by DLNR's April 4, 2004 letter to Dr. Alan Haun, Haun & Associates that states "our comments have been satisfactorily addressed and the plan now meets with our approval."
- A "no effect" letter from the Department of Land and Natural Resources Historic Preservation Division dated April 2, 2004 that states, "this project has already

gone through the historic preservation review process, and mitigation has been completed. Thus, we believe that no historic properties will be affected by this undertaking."

The valuable cultural, historical, and natural resources found in the Special Management Area Use permit area: The Archaeological Inventory Survey conducted by Paul H. Rosendahl, Ph.D., identified 27 sites consisting of 19 identified during the survey and 8 previously recorded during the Ali'i Drive Sewer Project in 1994. A total of 41 features were identified, consisting of 12 modified outcrops, 9 walls, 4 mounds, 3 lava tubes, 3 alignments, 2 platforms, 2 cupboards, and one of each of the following, enclosure, terrace, lava blister, shrine, pavement, and papamu. The inventory survey report assessed all of the sites as significant for their information content. Two sites, a possible shrine (Site 22042, Feature B) and a cave containing possible burial mounds (Site 15515), were provisionally assessed as significant for their cultural value pending further investigation. These two sites, and five other sites, were recommended for data recovery. An Archaeological Data Recovery Plan conducted by Haun & Associates in September of 2001 was submitted and approved by DLNR's April 4, 2004 letter to Dr. Alan Haun, Haun & Associates, which stated "our comments have been satisfactorily addressed and the plan now meets with our approval." According to the DLNR-SHPD's April 2, 2004 letter, "this project has already gone through the historic preservation review process and mitigation has been completed."

Based on a Botanical Reconnaissance of the Walua Professional Building properties conducted by Ron Terry, Ph.D in November of 2004, we conclude that no adverse botanical impacts would result from the development of the property.

Possible adverse effect of impairment of valued resources: The Department of Land and Natural Resources-Historic Preservation Division stated in its April 2, 2004 letter that, "this project has already gone through the historic preservation review process, and mitigation has been completed. Thus, we believe that no historic properties will be affected by this undertaking."

Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights. The proposed project will not restrict the use of natural resources along the shoreline, as the property is not in close proximity to the shoreline. Conditions of approval will protect any unidentified cultural, historical, and natural resource in the event any are encountered during construction.

Based on the above findings, it is determined that the proposed development and related improvements 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 permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed development shall be completed within five (5) years from the date of this permit. Prior to construction, the applicant shall secure Final Plan Approval from the Planning Director in accordance with Sections 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and proposed structures, landscaping, paved driveway access and parking stalls associated with the proposed development. Landscaping shall be provided as required by Planning Department Rule 17 (Landscaping Requirements).
3. Access from Walua Road, including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works. The existing sight distance easement on the subject property shall be maintained. All driveway connections shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
4. The applicant shall cooperate with the fulfillment of the Walua Road improvements for right-of-entry and necessary property acquisition in a timely manner.
5. A grading, drainage and erosion control plan and drainage report shall be prepared and submitted to the Department of Public works for review and approval prior to the issuance of a building or grading permit, and the recommended drainage system shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
6. The applicant shall maintain the existing drainage easement along the southern boundary and keep it free of obstructions for offsite stormwater flow.
7. 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.

8. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
9. The applicant shall install a backflow preventer (reduced pressure type) on the subject property, meeting with the approval of the Department of Water Supply.
10. All wastewater shall be disposed of into the County sewer system.
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-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
12. An Emergency Response Plan shall be submitted to the Hawaii County Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.
13. 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 compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
14. Comply with all applicable laws, rules, regulations and requirements of all affected agencies, including the Department of Public Works, Department of Water Supply, Department of Environmental Management, and Department of Health.
15. 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 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 original reasons for the granting of the permit.

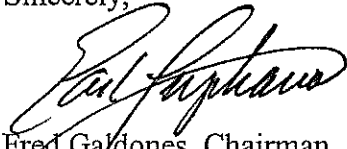
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- C. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional

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

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
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. Edward Rapoza