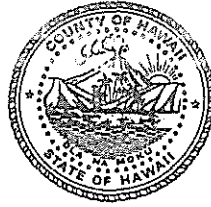


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

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

October 15, 2004

Mr. Jeremiah A. Henderson
Continental Pacific, LLC
36 Poko Place
Hilo, HI 96720

Dear Mr. Henderson:

Special Management Area Use Permit Application (SMA 03-009)
Applicant: Continental Pacific, LLC
Request: Development of 11-Lot Subdivision, Including Portion of a
Roadway Lot, and Related Improvements
Tax Map Key: 2-8-8:por-104, por 95 and por 3

The Planning Commission at its duly held public hearing on September 16, 2004, voted to approve the above-referenced application. Special Management Area (SMA) Use Permit No. 450 is hereby issued to allow the development of an 11-lot subdivision, including portion of a roadway lot, and related improvements. The area involved includes the former Hilo Coast Processing Mill complex and surrounding former sugar cane lands at Pepeekeo, South Hilo, 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 proposed request 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

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Mr. Jeremiah H. Henderson

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effect and elimination of planning options. The applicant is requesting the SMA Use Permit to allow the development of 11 residential lots and related improvements.

The proposed project will not create significant adverse impacts upon immediately adjacent properties, as surrounding properties are vacant or in residential uses and zoned A-20a and RS-7.5. Kulaimano Homesteads is located to the south and zoned A-5a, and properties to the west are zoned RS-10. The proposed project 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 property is located makai of the Hawaii Belt Road in Pepeekeo. As a result of the related Settlement Agreement, there is mauka-makai lateral coastal access, therefore the project will not restrict access to coastal recreational resources along the shoreline. The project site is not visible from the nearest public highway and will not block views from the highway to the sea. The viewplane from the shoreline towards the property will not be impacted as surrounding properties are vacant or in residential or industrial uses.

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. Water is available to the site from a private water 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. 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 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 is expected during construction, especially during grubbing and grading activities. These impacts can be mitigated through the utilization of best management practices and existing construction regulations. Given the limited nature of the improvements, no significant long-term air and noise quality impacts are anticipated. 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. Conditions of approval will be included relating to wastewater, solid waste and public safety to ensure that impacts on coastal resources are minimized.

Public recreational resources - primarily access to and along the shoreline - are protected by permit conditions. The project site is not directly tied with the recreational resources of the coastal areas, and will not reduce the size of the coastline or other areas used for public recreational uses. The subject property is visible from the Hawaii Belt Road. However, there are existing residential and industrial structures located makai of the subject property. According to the applicant, the properties are not among those listed

as historic properties in the Hawaii State Register of Historic Places, have not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan. On April 23, 2003, Paul H. Rosendahl, Ph.D., Inc. requested a "no effect" determination from the State Department of Land and Natural Resources Historic Preservation Division for the subject properties. By memo dated September 9, 2003, the State Department of Land and Natural Resources Historic Preservation Division indicated that they believe "there are no historic properties present because intensive cultivation has altered the land, and an acceptable archaeological assessment or inventory survey found no historic properties. Thus, no historic properties will be affected by this undertaking." The project area's existing terrain is marked by a dense overgrowth of ground cover, guava, kukui nut trees and abandoned sugarcane. The project area is absent of any active agricultural activity. According to the applicant, there are no rare, threatened or endangered species in the immediate area. The overall impact on the existing flora is expected to be negligible since the plants are alien and introduced species. The applicant has also stated that there are no rare or endangered species of fauna present in the area, as the property is not within the critical habitat for protected species.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, other than fishing and gathering along the shoreline, nor existence of any known valued cultural, historical or native resources in the area. Public access to the shoreline will be protected by proposed conditions. Mauka-makai public shoreline access and lateral public access along the oceanfront of the project area will be available. There are two major concerns with respect to natural hazards: the stability of the sea cliff and the potential for inundation from tsunamis or hurricane surf. The portion of the property currently zoned ML and MG lies at the top of a high sea cliff, which is about 60 – 80 feet high in this area. The sea cliff will gradually erode and migrate inland.

On the northern portion of the area covered by the SMA permit application, the coastline is again a sea cliff, about 80 – 100 feet high. In between, around Pepeekeo Point, there is a more gradual slope from the land to the sea, and the flatter area of land is about 30 - 40 feet above sea level. In some areas of high sea cliff, such as Alae Pt. and Honoli'i Pali, a few homes built in the last 40-50 years are now in danger of falling into the sea. There was a major episode of cliff collapse at Waipunalei several years ago that resulted in the loss of some structures. The Planning Director has tried to get advice on a general setback that can be considered safe for homes to be built on the top of the sea cliff, but the response has been that each site would have to be evaluated by a professional geophysicist. The standard under current law for these homes would be 40 feet from the shoreline, which is currently set at the top of the sea cliff. The Planning Director will recommend that no house be built closer than 40 feet from the top of the sea cliff as a condition of the SMA permit. In the area around Pepeekeo Point, another

setback will be established to protect coastal open space and create a buffer from potential tsunami or storm waves.

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 Low Density Urban. The proposed project will complement the goals, policies and standards of the Economic and Land Use Elements of the General Plan.

While the proposed project 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. Access to the site is from Hawaii Belt Road, a State owned two-lane paved roadway within a 100-foot right-of-way. The primary subdivision roadway will be the Pepeekeo Mill Road, an existing 20 to 30-foot wide asphalt-concrete paved roadway. The secondary subdivision roadway will consist of an 18-foot wide asphalt-concrete paved gravel roadway to be held in private ownership and maintained by lot owners in the subdivision.

The Pepeekeo Community Association and the applicant made an agreement that the applicant would contribute funds for recreational facilities at Kulaimano Park (Kulaimano Community Center) and grade the site. Specifically, the applicant agreed to contribute \$15,000 from the sale of each of the 11 lots that are expected to be created by this SMA permit.

Both the applicant and the Community Association wanted the funds to be donated to the county and spent by the county for the desired improvements. The Community Center is a county facility. The Community Association is not incorporated and does not have the ability to manage large funds or supervise a construction contract. The county administration is willing to manage the funds and to arrange for the construction contract when sufficient funds have accumulated. The County Council has a role in that by Charter, the Council has to formally accept any donations to the County. The county can accept donations that are earmarked for a specific purpose, and it is obligated to use the funds for those purposes after it has accepted them. Of course, it has to be for a purpose consistent with the functions of the county, but these facilities would clearly fit within those functions.

The applicant and the Community Association also requested that the agreement to make these donations be made a condition of the SMA permit. The Community Association is concerned about its ability to enforce the agreement if it is not a condition of the permits. Ordinarily, the Planning Director's recommended conditions of approval for a SMA permit are tied to the direct impacts of the project on the resources that are protected by the SMA law. To give some examples, because coastal development may affect public access, conditions may be included that require public access, or public

beach facilities in the SMA (to accommodate increased public use), or to mitigate visual impacts, there may be conditions that the project be reduced in size or moved back from the shoreline. The donation, while certainly beneficial to the community and a very positive move by the applicant, does not directly mitigate impacts of this SMA permit. In a broad sense, it provides facilities that can be used by the future lot owners as well as the general public, and accommodates recreational demand that may be generated by all of the applicant's various subdivisions in the area. To accommodate the wishes of the parties, the Planning Director recommends that the following condition be added as Condition No. 7:

7. As agreed to by the applicant, the applicant shall donate \$15,000 upon the sale of each lot (up to a maximum of 11 lots) created by this permit (SMA 03-009) to the County of Hawaii, to be used only for recreational improvements at Kulaimano Park (Kulaimano Community Center), as specified by the Pepeekeo Community Association, and grade a two-acre area of Phase 2 of the Kulaimano Master Plan. This condition is subject to County Council acceptance of the donation."

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 shall 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. Final Subdivision Approval of the proposed subdivision shall be secured from the Planning Director within three (3) years from the effective date of this permit.
3. The project, including the provision of public accesses to and along the shoreline, the limitation of number of dwellings to one per lot and provision of water to the lots, shall be completed in substantial compliance with the Settlement Agreement dated April 12, 2002.
4. The permit shall not take effect with respect to the project areas that are currently zoned CV, MG, or ML, unless and until the pending rezoning ordinance has received final approval. If final approval of the rezoning ordinance is not granted

within one year, or if the rezoning ordinance is substantially changed with respect to the areas within the SMA, this matter shall be returned to the agenda of the Planning Commission for appropriate action.

5. No fence, wall, structure, or landscaping shall be installed that impedes usage of the public access easement.
6. The Police and Fire Departments and Civil Defense Agency, shall be given the access codes to any gates.
7. As agreed to by the applicant, the applicant shall donate \$15,000 upon the sale of each lot (up to a maximum of 11 lots) created by this permit (SMA 03-009) to the County of Hawaii, to be used only for recreational improvements at Kulaimano Park (Kulaimano Community Center), as specified by the Pepekeo Community Association, and grade a two-acre area of Phase 2 of the Kulaimano Master Plan. This condition is subject to County Council acceptance of the donation.
8. Applicant, and any private lot owners, shall obtain a NPDES permit for any land disturbance of more than one acre.
9. To retain the existing natural appearance of the shoreline, there shall be no grading or grubbing within the 40-foot setback from the certified shoreline, and no more than 50 percent of the large trees (in excess of 12 inch diameter at base) within the shoreline setback shall be removed on any of the lots.
10. All lot purchasers shall be informed that a coal-burning power plant is operated on nearby property and that they may expect noise and smoke from its operation.
11. An approved septic tank/leach field system shall be installed on each lot before occupancy of any residential development. No house or other substantial structure shall be built closer to the ocean than 40 feet from the top of the sea cliff. This condition shall apply even if the shoreline is later certified at a location makai of the top of the cliff. In the area of the shoreline near Pepekeo Point where there is a more gradual slope from the land to the sea, no house or other substantial structure shall be built closer than 40 feet mauka of a line that marks the transition between the relatively flat land and the slope to the sea. The location of this transition line is approximately as shown on Attachments 1 and 2. (See Attachments 1 and 2, photos of area) The line shall be established and marked by a licensed surveyor, with the approval of the Planning Director before final subdivision approval and entered on the final subdivision maps. The transition line shall not be makai of the certified shoreline. The applicant shall inform all buyers of residential lots through a deed covenant that the sea cliff may be subject

to long-term erosion and recommend that they seek professional advice in locating homes near the sea cliff, and advise that the setbacks established under this permit do not guarantee safety.

12. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties. A drainage study of the property shall be prepared and submitted to the Department of Public Works prior to submittal of plans for Final Subdivision Approval.
13. 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 in the State of Hawaii.
14. 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 State 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.
15. 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.
16. Comply with all applicable laws, rules, regulations and requirements of other affected agencies, including the Department of Public Works and Department of Health.
17. 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.

Mr. Jeremiah H. Henderson

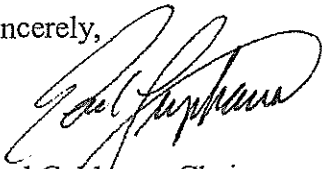
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- C. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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 Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

Lcontinentalsma03-009pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Department of Land and Natural Resources/HPD-Kona
Rodney Haraga, Director/DOT-Highways, Honolulu
Ms. Alice Kawaha
Mr. Robert Usagawa
Subdivision Section
Steven S. C. Lim, Esq.



Attachment 1

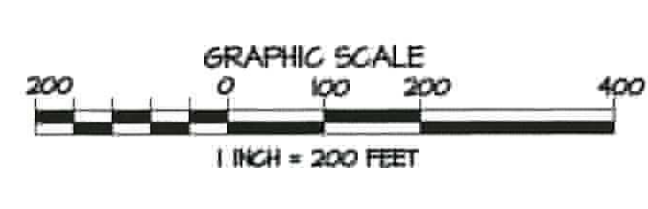


Attachment 2



SHORELINE SURVEY OF
PORTIONS OF GRANT 872 TO EMMA METCALF, GRANT 1030 TO KAINA,
GRANT 1158 TO J. PELHAM, R. P. 1654, L. C. AW. 2289, AP. 1 TO KAUHOLA,
R. P. 7192, L. C. AW. 8559-B, AP. 17 & 18 TO WM. C. LUNALILO
AND R. P. 8164, L. C. AW. 5663, AP. 2 TO KAHONU
 AT PEPEEKO TO KAPEHU, SOUTH HILO, ISLAND OF HAWAII, HAWAII
 TAX MAP KEY: 2-8-07: 1 & FOR. 53, 2-8-08: 1 & 3 AND 2-8-09: 1 (3RD DIVISION)

Notes:
 Azimuths and Coordinates are referred to Government Triangulation Station "Aloha" A.



OWNER: CONTINENTAL PACIFIC, LLC
 P.O. BOX 407
 TROY, AL 36061

The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of 10/22/2002.
 Ryan M. Suzuki
 Licensed Professional Land Surveyor
 Certificate Number 10059
 Expiration Date: 4/30/04

This map was prepared by me or under my direct supervision.
 Ryan M. Suzuki
 Licensed Professional Land Surveyor
 Certificate Number 10059
 Expiration Date: 4/30/04