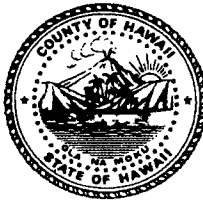


Harry Kim
Mayor



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County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

FEB - 2 2018

Mr. Scott F. Church, Managing Member
Hale Pacifica, LLC
78-6980 Kaluna Street #147
Kailua-Kona, HI 96740

Dear Mr. Church:

SUBJECT: Special Management Area Use Permit (SMA 03-000007)
Applicant: Hale Pacifica, LLC (formerly Wesley & Kelley Huggett)
Request: Amendment to Condition No. 3 (Minimum Access Easement Width)
Tax Map Key: 7-5-019:030

The Leeward Planning Commission, at its duly held public hearing on January 18, 2018, voted to approve the above-referenced request to amend Special Management Area Use Permit (SMA 03-000007) to amend Condition No. 3, which allowed the construction of a 3½-story, 45-foot high, 12-unit multiple-family residential development and related improvements. The project site is located on the west (makai) side of Ali'i Drive, adjacent to and north of the Sea Village Condominium Complex, Kahului 1st & 2nd, North Kona, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicants, 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 seven (7) years from the effective date of this amendment. Final Plan Approval by the Planning Director in accordance with the Zoning Code shall be secured by the applicants prior to the commencement of construction. Development plans shall identify existing and proposed structures, current and valid certified shoreline and the required 20-foot shoreline setback line, construction barrier, fire protection measures, paved driveway accesses and parking stalls and other improvements

FEB - 2 2018

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).

3. Meeting with the approval of the Department of Public Works and Fire Department, a minimum 20-foot wide access easement shall be provided for vehicular and utilities access, except that if the development consists of a total of four (4) units or fewer units then the existing 16-foot wide access easement is acceptable with any required additional fire prevention measures. If a 20-foot wide access easement is required, provide a copy of the recorded easement to the Planning Department upon receipt from the State of Hawai'i Bureau of Conveyances.
4. A current and valid certified shoreline survey approved by the State Department of Land and Natural Resources or their board shall be submitted to the Planning Director prior to the issuance of a Final Plan Approval or the issuance of permits for any land altering or land disturbing activities, whichever comes first.
5. A drainage study of the property shall be prepared and submitted to the Department of Public Works prior to submittal of plans for Final Plan Approval. Drainage improvements, if required shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
6. The construction (and/or erosion control) barrier must be shown and properly noted on the plans submitted with any permits required for any land altering and/or construction activities, meeting the approval of the Planning Director. The construction notes on the plans must include the following statement, "the construction (and/or erosion control) barrier must be erected prior to any land altering and/or construction activities, and must remain in place until final inspection by Department of Public Works (or Planning Department)."
7. A construction barrier, meeting the approval of the Planning Director, shall be erected along the entire length of the minimum 20-foot shoreline setback line from the shoreline indicated in a current and valid certified shoreline survey prior to the commencement of land altering and/or construction activities and shall remain in place until final inspection has been granted by the Building Division for the project.

8. 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 Hawai‘i. Best Management Practices shall be implemented. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
9. All work on the project that occurs near the shoreline will avoid any direct or indirect impacts to marine life, including but not limited to, green sea turtles and hawksbill turtles.
10. Night-time construction will be avoided during the seabird fledging period of September 15 to December 15.
11. All outdoor lights shall be fully shielded so the bulb can only be seen from below bulb height and only used when necessary. Artificial lights from exterior lighting fixtures, including but not limited to floodlights, uplights or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward, the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b) of the Hawai‘i Revised Statutes (HRS).
12. The project shall connect to the existing sewer line on Ali‘i Drive, meeting with the approval of the Department of Environmental Management prior to the issuance of a Certificate of Occupancy.
13. 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.
14. A 10-foot wide public access along the shoreline shall be provided, meeting with the approval of the Planning Director prior to receipt of a Certificate of Occupancy.
15. An archaeological monitor shall be present prior to ground disturbing activities in the affected area on the parcel. In the unlikely event that during future construction activities that historic properties such as lava tube openings, concentrations of

artifacts, structural remains or human skeletal remains are found during construction activities, the applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651 for further guidance.

16. An Emergency Response Plan shall be submitted to the Hawai'i County Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.
17. The applicant shall submit an estimated maximum daily water usage calculations to the Department of Water Supply, prepared by a professional engineer licensed in the State of Hawai'i, for the anticipated demand of any changes in the total number of units not previously reviewed by DWS.
18. Subject to the Department of Water Supply and/or other agencies' requirements to construct improvements within the road right-of-way fronting the property affected by the proposed development, the applicant shall be responsible for complying with DWS requirements, including but not limited to the relocation and adjustment of the Department's affected water system facilities (i.e. installing a fire hydrant or detector check meter and/or appropriate service laterals).
19. 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.
20. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
21. If the applicants should require an additional extension of time, the Planning Department shall submit the applicants' request to the Planning Commission for appropriate action.

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

[Note: Ramseyer version available upon request.]

Mr. Scott F. Church, Managing Member
Hale Pacifica, LLC
Page 5

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

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Shancy Watanabe of the Planning Department at 961-8144.

Sincerely,



Keith F. Unger, Chairman
Leeward Planning Commission

LHalepacificiaAmend03-007lpc
Enclosure: PC Findings Report

cc w/enclosures: Hale Pacifica, LLC
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources-HPD
Department of Environmental Management
GIS Section

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
PLANNING COMMISSION FINDINGS

HALE PACIFICA LLC (FORMERLY WESLEY and KELLEY HUGGETT)
AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 03-000007

Based on the following considerations, an amendment to Condition No. 3 (Minimum Access Easement Width) of Special Management Area (SMA) Use Permit No. 03-000007 is approved.

HALE PACIFICA LLC (FORMERLY WESLEY and KELLEY HUGGETT) has submitted a request to amend Condition No. 3 (Minimum Access Easement Width) of Special Management Area (SMA) Use Permit No. 03-000007, which was approved to allow the construction of a 3½-story, 45-foot high, 12-unit multiple-family residential development and related improvements. The property is located on the west (makai) side of Ali‘i Drive, adjacent to and north of the Sea Village Condominium Complex, Kahului 1st & 2nd, North Kona, Hawai‘i, TMK: (3) 7-5-019:030.

The applicant requested the following specific amendment to Condition No. 3 of SMA 03-000007 (new material is underlined):

“3. A minimum 20-foot wide access easement shall be provided for vehicular access and utilities, except that if the development shall include 4 units or less, then the existing 16-foot wide access shall be acceptable.”

According to the applicant, they do not intend to pursue a 12-unit condominium project, but rather downsize the project to 4-units, which will help to reduce the following: traffic congestion on the subject property, driveway ingress and egress, noise impacts and visual profile. The applicant further states that lowering the number of units may be more compatible with the surrounding environment. Although the applicant intends to downsize to four (4) units, the applicant’s proposed amendment language for Condition No. 3 (Minimum Access Easement Width) provides flexibility for the access easement width. In this case, should the applicant decide to build more than four (4) units in total up to a maximum of twelve (12) units for the subject property, then the applicant will adhere to the minimum 20-foot wide access easement for vehicular access and utilities as required by the Department of Public Works and Fire Department.

SMA Use Permit No. 03-000007 was originally approved by the Planning Commission on June 17, 2005 to allow the construction of a 3½-story, 45-foot high, 12-unit multiple-family residential development and related improvements. The proposed development includes parking stalls, landscaping, and recreational amenities including a swimming pool, spa, pedestrian walkways, outdoor barbecues and open spaces. This amendment request application included a revised site plan and a letter from the Planning Department waiving the requirement of a Certified Shoreline Survey.

The grounds for approving development within the Special Management Area are based on HRS, Chapter 205A-26(2) (Special Management Area guidelines) and Rule 9-11(E) of the Planning Commission Rules of Practice and Procedure. Planning Commission Rule 9-11(E) states that the Authority (Planning Commission) may permit the proposed development only upon finding that:

1. The development will not have any substantial adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest;
2. The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS;
3. The development is consistent with the General Plan, Zoning Code and other applicable ordinances;
4. The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
 - a. The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
 - b. The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - c. The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

The proposed 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. In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action. 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.

A “substantial adverse effect” is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. In reviewing the proposed development against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1 through 10), it has been determined that the proposed amendment to Condition No.3 (Minimum Access Easement Width) will not have a significant adverse environmental or ecological effect upon the Special Management Area. This determination is based on the following:

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, Hawai‘i Revised Statutes (HRS), and Special Management Area (SMA) Rules and Regulations of the County of Hawai‘i, 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 objectives and policies of Chapter 205A, HRS include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas. There is no public access to the mountains that runs through the subject property. The project will not restrict access to coastal recreational resources along the shoreline. An existing condition requiring the applicant to provide a 10-foot wide public access along the shoreline meeting the approval of the Planning Director prior to receipt of a Certificate of Occupancy will remain.

The property is located along the shoreline and is entirely situated within the Special Management Area. Therefore, the property is subject to SMA review. The site is an approximately 15,203-square foot oceanfront property located makai of Ali'i Drive near Kahului Landing. The property is relatively level near the Ali'i Drive entrance but drops about eight (8) to ten (10) feet towards the makai (ocean) side of the property. The property is currently vacant and undeveloped. Development can cause runoff that has the potential to affect coastal ecosystems. Therefore, the Planning Commission recommends adding language to the existing conditions to ensure that runoff will not adversely affect coastal ecosystems.

According to the Department of Public Works, as Special Flood Hazard Area VE affects the subject parcel as designated by the Flood Insurance Rate Map (FIRM). Flood zone VE is further defined as an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The project site is within the Tsunami Evacuation Zone designated by the Pacific Disaster Center. The nearest Civil Defense siren is less than 2,000 feet away. The nearest known stream is the intermittent Waiaha Stream, located approximately 5,500 feet to the east and is situated above the 400-foot elevation. The proposed project is not anticipated to impact the Waiaha Stream. The proposed development would not create an increase in coastal flooding under normal rainfall conditions, and on-site drainage systems will be developed to adequately dispose of project-generated surface runoff. A condition will be added to address the concerns of construction debris entering the coastal waters by installing a construction and/or sedimentation barrier during construction. Improvements in a floodplain will be subject to the requirements of Chapter 27, Floodplain Management, of the Hawai'i County Code. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.

The applicant continues to work with the Fire Department regarding acceptable fire prevention measures required for the project scope. The applicant will be required to comply with all fire prevention measures as directed by the Fire Department.

After review, it has been determined that the proposed development is consistent with the objectives and policies listed under Chapter 205A, HRS.

The proposed development is consistent with the County General Plan and Zoning Code and other applicable ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Medium Density Urban.

These are areas of village and neighborhood commercial and single family and multiple family residential (up to 35 units per acre) and related functions. The 1989 General Plan designation was Resort.

The subject property is zoned V-1.25 (Resort-Hotel District) by the County of Hawai'i and is situated within the State Land Use Urban District. Surrounding properties are zoned Resort-Hotel District (V-1.25) and in residential and commercial uses. A single-family dwelling and the Sun Terra Resort office building are located on the north side of the property, and the Sea Village Condominiums are located south of the site. The property directly east across Ali'i Drive is zoned Multiple-Family (RM-4) and is currently vacant. Kona Sea Ridge and Ali'i Park Place Condominiums are located across Ali'i Drive to the southeast.

The KCDP was adopted by Ordinance 08-131 on September 25, 2008 by the Hawai'i County Council. The project site is within the Kona Urban Area (KUA) but is not within a proposed location for a transit-oriented development (TOD). A Kona CDP objective supports increased pedestrian and bicyclist infrastructure accommodations in the KUA, which denotes Ali'i Drive as one of the principal bike-pedestrian routes on the "Official Transportation Network Map – Pedestrian and Bike Paths." As Ali'i Drive is a heavily traveled roadway for pedestrians, cyclists and motorists, the Planning Commission encourages sufficient access easement widths to provide the necessary safe sight distance and adequate visibility over the Ali'i Drive roadway shoulder from and into the proposed driveway intersection approach zone.

The Department of Water Supply (DWS) has no objections to the proposed amendment to Condition No. 3. However, due to the reduction in the total number of dwelling units, the Department requests that the applicant submit an estimated maximum daily water usage calculations, prepared by a professional engineer licensed in the State of Hawai'i, for the anticipated demand for the subject property. Based on the water usage calculations provided, the Department will determine the prevailing facilities charge to be paid, and the appropriate-meter size to serve the property. DWS also stated that their previous comments dated April 26, 2017 to the applicant, regarding the required water system improvements are still applicable. Additional conditions will be added to reflect these requirements from DWS.

An existing condition will remain which required the project to connect to the County's new wastewater treatment facility at Kealakehe via the existing sewer line in Ali'i Drive.

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. Updated conditions of approval will be included relating to wastewater, solid waste and public safety to ensure that impacts on coastal resources are minimized.

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. The proposed development is not expected have any adverse impacts to the recreational resources of the area, as the shoreline area fronting the property is very rocky. The surf break north of the property, known as "Tiki's", will not be impacted as the project will not affect access to this surf break. Access to the site is from Ali'i Drive, a County maintained roadway with a pavement width of 20 feet within an approximate 50-foot right-of-way.

According to a view plane study conducted by Dr. Ron Terry in the original SMA application, the proposed multi-family project will affect the views from Ali'i Drive to the shoreline by essentially closing a gap that currently allows view of the nearshore waters and distant points to the north. However, the narrowness of the view corridor precludes any reasonable mitigation measures to avoid such effect. There is a better, unobstructed viewpoint a few hundred feet north of the property. The view plane of the shoreline towards the property from Kuakini Highway and the Queen Ka'ahumanu Highway will not be impacted as lands along the shoreline in this area are extensively developed with single and multiple-family residences.

According to the applicants, the traffic generated by the proposed maximum of 12 units (10 vehicles per hour in peak periods), falls far below the guideline suggested by the Institute of Transportation Engineers that "a traffic access/impact study be conducted whenever a proposed development will generate 100 or more added (new) peak direction trips to or from the site during the adjacent roadways' peak hours or the development's peak hour." The applicants have provided a copy of the warranty deed for the property that identifies the perpetual easement for the subject property from Ali'i Drive through TMK: (3)7-5-19:012 and (3)7-5-021:037. By letter dated January 13, 2005, Vacation Internationale, Inc. (TMK: (3)7-5-019:038) intends to grant the applicants an additional minimum four-foot wide easement for vehicular access and utilities for the project.

This proposed amendment to Condition No. 3 of the previously approved Special Management Area Use Permit No. SMA 03-000007 is consistent with the County General Plan, Zoning Code and other applicable ordinances.

The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:

- a. **The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;**
- b. **The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and**
- c. **The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.**

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. There is not anticipated disruption of existing public access to the shoreline or to the mountain, as there is no record of a designated public access to the shoreline or mountain areas that traverses the property. The closest public access is located at Kahului Landing approximately 250 feet north of the site. However, as the property is an oceanfront parcel, the existing condition will remain to provide a 10-foot wide public access along the shoreline.

In view of the Hawai'i State Supreme Court's "PASH" and "Ka Pa'akai O Ka 'Āina" decisions, the issue relative to native Hawaiian gathering and fishing 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: An archaeological inventory survey of the property was conducted by Dr. Robert Rechtman on March 4, 2003. Due to the extensive grading and development of the property, no archaeological features were discovered on the site. DLNR-SHPD has stated that "previous grubbing/grading has altered the land; thus, no historic properties will be affected by this undertaking." Additionally, Dr. Rechtman stated that "all have seemingly been destroyed by development activities" and recommends that an archaeological monitor be present prior to ground-disturbing activities in the affected area on the parcel.

A biological reconnaissance of the site was conducted in March, 2003 by Dr. Ron Terry. Given the improved nature of this site and the surrounding urban area, Dr. Terry concluded that no adverse botanical impacts would ensue from the development of the property.

In close proximity just north of the subject property, in the 2017 Final Environmental Assessment (FEA) Findings of No Significant Impact (FONSI) for the Ali'i Drive Culvert Replacement at Kahului Bay, the U.S. Fish and Wildlife Service (USFWS) has commented that outdoor lighting can result in seabird disorientation, fallout and injury or mortality. The endangered Hawaiian petrel (*Pterodroma sandwichensis*) and the threatened Hawaiian sub-species of Newell's shearwater (*Puffinus auricularis newelli*) have been recorded over-flying the general project vicinity between late April and the middle of December each year. The endangered Hawaiian petrel, the threatened Newell's shearwater and the band-rumped storm petrel (*Oceanodroma castro*) are all under both federal and State of Hawai'i endangered species status. According to USFWS, "potential impacts to seabirds can be minimized by: 1) shielding outdoor lights associated with the project, particularly when used during each year's peak fledging period (September 15 through December 15); 2) avoiding night-time construction; and 3) providing all project staff with information regarding seabird fallout. Green sea turtles and hawksbill turtles may utilize the shoreline area. Conditions will be added to address shielding outdoor lighting, avoiding night-time construction and installing a construction barrier to prevent construction debris from entering the coastal area.

The valuable cultural, historical, and natural resources found in the area: The DLNR-SHPD has indicated that the property has been previously altered, thus no historic properties will be affected. An archaeological study conducted by Dr. Rechtman did not identify any archaeological features on the site.

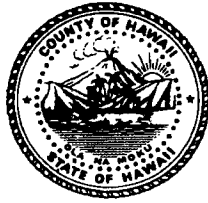
Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.

Feasible actions to protect native Hawaiian rights: As stated by the applicants, no valued cultural, historical or natural resources exist on the site and there is no evidence of any traditional customary Native Hawaiian rights being practiced on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. In response to recent discussions with DLNR-SHPD, Condition No. 9 will be amended to reflect DLNR-SHPD's current language regarding protecting historic properties. The condition requiring an archaeological monitor will remain.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, it is determined that the proposed development and related improvements will not have 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.

Harry Kim
Mayor



Keith F. Unger, Chair
Collin Kaholo, Vice Chair
Nancy Carr Smith
Scott Church
Perry Kealoha
Barbara Nobriga
Oliver "Sonny" Shimaoka

County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

MAR 29 2017

Wesley and Kelley Huggett
13565 Mira Montana Drive
Del Mar, CA 92014-3455

Dear Mr. and Mrs. Huggett:

SUBJECT: Special Management Area Use Permit (SMA 03-000007)
Applicant: Wesley and Kelley Huggett
Request: Amendment to Condition No. 2 (Time Extension to Complete Construction)
Tax Map Key: 7-5-019:030

The Leeward Planning Commission, at its duly held public hearing on March 16, 2017, voted to approve the above-referenced request to amend Condition No. 2 (time to complete construction) of Special Management Area (SMA) Use Permit No. 03-000007. The project site is situated on the west (makai) side of Ali'i Drive, adjacent to the north of the Sea Village condominium Complex, Kahului, North Kona, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicants, 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 seven (7) years from the date of this amendment. Final Plan Approval by the Planning Director in accordance with the Zoning Code shall be secured by the applicants 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).

Hawai'i County is an Equal Opportunity Provider and Employer

MAR 29 2017

3. A minimum 20-foot wide access easement shall be provided for vehicular access and utilities.
4. All development generated runoff shall be disposed of on site and shall 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 Plan Approval. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
5. 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 Hawai'i.
6. The project shall connect to the existing sewer line on Ali'i Drive, meeting with the approval of the Department of Environmental Management prior to the issuance of a Certificate of Occupancy.
7. 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.
8. A 10-foot wide public access along the shoreline shall be provided, meeting with the approval of the Planning Director prior to receipt of a Certificate of Occupancy.
9. 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-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken. An archaeological monitor shall be present prior to ground disturbing activities in the affected area on the parcel.
10. An Emergency Response Plan shall be submitted to the Hawai'i County Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.

11. 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.
12. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. If the applicants should require an additional extension of time, the Planning Department shall submit the applicants' request to the Planning Commission for appropriate action.

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

[Note: Ramseyer version available upon request.]

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

Approval of this permit is based on the reasons given in the attached Findings Report.

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

Sincerely,



Keith F. Unger, Chairman
Leeward Planning Commission

LHuggettAmendSMA03-007lpc
Enclosure: PC Findings Report

cc: Scott Church, Development Manager
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

WESLEY AND KELLY HUGGETT
AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 03-00007

Based on the following considerations, an amendment to Condition No. 2 of Special Management Area Use Permit No. 03-00007 to allow a 7-year time extension to complete construction of the proposed development is approved.

WESLEY AND KELLEY HUGGETT have submitted a request to amend Condition No. 2 (time to complete construction) of Special Management Area (SMA) Use Permit No. 03-000007, which was approved to allow the construction of a 3½-story, 45-foot high, 12-unit multiple-family residential development and related improvements. The property is located on the west (makai) side of Ali'i Drive, adjacent to and north of the Sea Village Condominium complex, Kahului, North Kona, Hawai'i, TMK: 7-5-019:030.

The applicants, who are the landowners, are requesting a time extension to comply with Condition No. 2 of SMA Use Permit No. 03-000007. They are asking that the wording of Condition No. 2 be changed from "Construction of the proposed development *shall be completed* within five (5) years from the date of this (amended) permit" to "Construction of the proposed development *shall start* within five (5) years from the date of this amendment" (emphasis added). SMA Use Permit No. 03-00007 was approved by the Planning Commission on June 17, 2005 to allow the construction of a 3½-story, 45-foot high, 12-unit multiple-family residential development and related improvements.

The Planning Director is recommending that the Planning Commission approve the time extension request, but allow for 7 years to complete construction instead of the applicants' request to start construction in 5 years with no specified construction deadline. It has been the Planning Commission's standard practice to approve projects with a time condition for completion. If the project is not completed within this specified time frame, then the applicant(s) will be required to appear again before the Planning Commission to provide reasons for the delay and to request for additional time by which to complete the project.

The original SMA Use Permit application was filed on May 30, 2003 by then applicant Eric Soto, and a petition for standing in a contested case was filed by the adjacent Association of Apartment Owners of Sea Village, Inc. before the first meeting of the Planning Commission on August 1, 2003. After the first meeting, four additional hearings were held before the Planning Commission, and the petition for standing in the contested case hearing filed by the Association of Apartment Owners of Sea Village, Inc. was subsequently withdrawn. On July 26, 2004, the property was sold to the current landowners, Wesley and Kelley Huggett, who wish to pursue the development as originally represented by Eric Soto. There were a total of seven hearings before the Planning Commission on this matter. On June 17, 2005, the Planning Commission voted to approve the request with two changes. These changes included a new Condition No. 3, which stated "A minimum 20-foot wide easement shall be provided for vehicular access and utilities" and an addition to Condition No. 9, which stated "An archaeological monitor shall be present prior to ground disturbing activities in the affected area on the parcel."

During the original SMA proceedings for this project, there were a number of issues that were made known by surrounding property owners and the public, which were addressed by the Planning Commission. The main issues included a possible grave site(s) on the subject property,

insufficient vehicular access width (16 feet wide), shoreline setback issues (20 feet vs 40 feet), public access, added traffic in the area, connection to sewer, and the impact of neighboring shoreline views that would be impacted by the proposed development.

The two main issues were the possible grave site(s) and the insufficient vehicular access easement width. In regards to the possible grave site(s) on the subject property, a site inspection was conducted of the subject property by Dr. Bob Rechtman, Greg Mooers, Paul Rosendahl and Linda Nagai. Based on the site inspection, a letter dated September 29, 2003 was generated by Dr. Rechtman, which stated that "all have seemingly been destroyed by development activities" and recommends that an archaeological monitor be present prior to ground-disturbing activities in the affected area on the parcel. Condition No. 9 of SMA Use Permit No. 03-000007 was subsequently amended to require that an archaeological monitor be present prior to ground disturbing activities in the affected area on the parcel.

In regards to the insufficient vehicular access width of 16 feet, Condition No. 3 was added to require the applicants to provide a minimum 20-foot wide access easement for vehicular access and utilities. The applicants have secured these easements from the adjoining property owners and has a minimum 20-foot wide access easement.

On April 22, 2010, the applicants were granted an administrative time extension of 5 years as allowed by Condition No. 13 of SMA Use Permit No. 03-000007. Condition No. 13 also states that if the applicants should require an additional extension of time, the Planning Department shall submit the applicants' request to the Planning Commission for appropriate action. The applicants are requesting an extension of time to comply with Condition No. 2.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, 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 original application was reviewed against the guidelines for granting of a Special Management Area Use Permit and was approved by the Planning Commission with conditions. The time extension request is reviewed by the following criteria:

A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, 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 and Zoning Code.

C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence. The applicants have submitted a request for a time extension request to comply with Condition No. 2 of SMA Use Permit No. 03-000007. In the amendment request, the applicants speak to the reasons for non-performance to construct the project within the allotted time. These reasons include the economy and the real estate market, the difficulty to secure financing, the continued negotiations to secure the utility and access easements, as well as other reasons.

The granting of the time extension would not be contrary to the General Plan and Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map for this property is Medium Density Urban, which allows for Village and neighborhood commercial and single family and multiple family residential and related functions (multiple family residential – up to 35 units per acre. The proposed request for 12 units on the 15,203-square foot property is consistent with the General Plan designation for this area. Additionally, the property is zoned Resort-Hotel – 1,250 square feet (V-1.25), which will allow 12 units to be constructed on the subject property. The height limit for the Resort-Hotel zoning district is 45 feet. Based on the above, the granting of the time extension is not contrary to the General Plan and Zoning Code.

The granting of the time extension would not be contrary to the original reasons for the granting of the permit. SMA 03-00007 was approved by the Planning Commission with conditions on June 17, 2005 based on the criteria for approving a Special Management Area Use Permit. The following is a summary of the original reasons for approval:

The proposed project will not create significant adverse impacts upon immediately adjacent properties, as surrounding properties are zoned V-1.25 and in residential and commercial uses. A single family residence and office building are located on the north side of the property, and the Sea Village Condominiums are located south of the site. The property to the east across Ali'i Drive is vacant and zoned RM-4.

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 subject site is an oceanfront property located on Ali'i Drive. According to a viewplane study conducted by Dr. Ron Terry, the proposed multi-family project will affect the views from Ali'i Drive to the shoreline by essentially closing a gap that currently allows view of the nearshore waters and distant points to the north. However, the narrowness of the view corridor precludes any reasonable mitigation measures to avoid such effect. There is a better, unobstructed viewpoint a few hundred feet north of the property. The viewplane of the shoreline towards the property from Kuakini Highway and the Queen Kaahumanu Highway will not be impacted as lands along the shoreline in this area are extensively developed with single and multiple-family residences. The proposed structure will be consistent with the Zoning Code's maximum height limit of 45 feet.

There are no public recreational resources being affected by the project. The project site is not directly tied with the recreational resources of the coastal area, and will not reduce the size of the coastline or other areas used for public recreational uses. The proposed development would not have any adverse impacts to the recreational resources of the area, as the shoreline area fronting the property is very rocky. According to the applicants, the surf break north of the property known as "Tiki's" will not be impacted, as the project will not affect access to this surf break. Therefore, the project will neither restrict access to coastal recreational resources along the shoreline nor will it restrict existing visual viewplanes.

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. County water is available to the site. The project will connect to the County's new wastewater treatment facility at Kealakehe via the existing sewer line in Ali'i Drive. 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.

An archaeological inventory survey of the subject property was conducted by Dr. Robert Rechtman on March 4, 2003. Due to the extensive grading and development of the property, no archaeological features were discovered on the site. By letter dated June 27, 2003, the State Department of Land and Natural Resources Historic Preservation Division has stated that "previous grubbing/grading has altered the land; thus, no historic properties will be affected by this undertaking." In response to Mrs. Linda Nagai who recalled the presence of a grave the site, by letter dated September 29, 2003, Dr. Rechtman has stated that "all have seemingly been destroyed by development activities" and recommends that an archaeological monitor be present prior to ground-disturbing activities in the affected area on the parcel.

A biological reconnaissance of the property was conducted in March, 2003 by Dr. Ron Terry. Given the improved nature of the site and the surrounding urban area, Dr. Terry concluded that no adverse botanical impacts would ensue from the development of the property. As such, no known rare, threatened, or endangered species are known to inhabit the parcel or are expected to be discovered on the site. Similarly, the likelihood of any threatened or endangered flora species appears remote.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. The property is not used for access to the mountains or shoreline and no access to these areas will be impacted by the proposed action. Therefore, there will be no disruption of existing public access to the shoreline, as there is no record of a designated public access to the shoreline or mountain areas that traverses the property. The closest public access is located at Kahului Landing approximately 250 feet north of the site. However, as the property is an oceanfront parcel, a condition will be included to provide a 10-foot wide public access along the shoreline. As the property is located in an area subject to coastal wave action and identified as "VE", all construction will be in compliance with Chapter 27, Flood Control, and all regulations of the Federal Emergency Management Agency. The proposed development would not create an increase in coastal flooding under normal rainfall conditions, and on-site drainage systems will be developed to adequately dispose of project-generated surface runoff. There are no identified historic resources, recreational 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.

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 Ali'i Drive, a County maintained roadway with a pavement width of 20 feet within an approximate

50-foot right-of-way. According to the applicants, the traffic generated by the proposed 12 units (10 vehicles per hour in peak periods), falls far below the guideline suggested by the Institute of Transportation Engineers that “a traffic access/impact study be conducted whenever a proposed development will generate 100 or more added (new) peak direction trips to or from the site during the adjacent roadways’ peak hours or the development’s peak hour.” The applicants have provided a copy of the warranty deed for the property that identifies the perpetual easement for the subject property from Ali’i Drive through TMK: 7-5-19: 12 and 7-5-21: 37. By letter dated January 13, 2005, Vacation Internationale, Inc. (TMK: 7-5-19: 38) intends to grant the applicants an additional minimum four-foot wide easement for vehicular access and utilities for the project.

In view of the Hawai’i 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 in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: An archaeological inventory survey of the property was conducted by Dr. Robert Rechtman on March 4, 2003. Due to the extensive grading and development of the property, no archaeological features were discovered on the site. DLNR-HPD has stated that “previous grubbing/grading has altered the land; thus, no historic properties will be affected by this undertaking.” Additionally, Dr. Rechtman stated that “all have seemingly been destroyed by development activities” and recommends that an archaeological monitor be present prior to ground-disturbing activities in the affected area on the parcel.

A biological reconnaissance of the site was conducted in March, 2003 by Dr. Ron Terry. Given the improved nature of this site and the surrounding urban area, Dr. Terry concluded that no adverse botanical impacts would ensue from the development of the property.

The valuable cultural, historical, and natural resources found in the area: The DLNR-HPD has indicated that the property has been previously altered, thus no historic properties will be affected. The archaeological study conducted by Dr. Rechtman did not identify any archaeological features on the site.

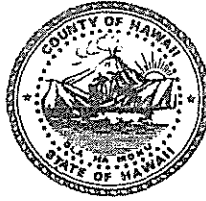
Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.

Feasible actions to protect native Hawaiian rights: As stated by the applicants, no valued cultural, historical or natural resources exist on the site and there is no evidence of any traditional customary Native Hawaiian rights being practiced on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights. A condition of approval has been added that will protect any unidentified cultural, historical, and natural resources in the event any are encountered during construction, which will require the applicant to cease work and notify the DLNR-SHPD should any remains be discovered on the site, until given clearance to proceed by the DLNR-SHPD. Lastly, another condition of approval has been added to provide a 10-foot wide public access along the shoreline.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others.

Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, the time extension request and allow a period of seven (7) years from the effective date of the amendment to complete construction is approved by the Planning Commission.



County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

July 7, 2005

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

Dear Mr. Mooers:

Special Management Area Use Permit Application (SMA 03-007)
Applicants: Wesley and Kelley Huggett (formerly Eric Soto)
Request: 12-Unit Condominium Project and Related Improvements
TMK: 7-5-19:30

The Planning Commission at its duly held public hearing on June 17, 2005, voted to approve the above-referenced application for a Special Management Area Use Permit application to allow the construction of a three and one-half story, 45-foot high, 12-unit multi-family residential development and related improvements on approximately 15,203 square feet of land. The property is located on the west (makai) side of Alii Drive, adjacent to and north of the Sea Village Condominium complex, Kahului, 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.

This application was originally filed on May 30, 2003, by then applicant Eric Soto, and a petition for standing in a contested case by the adjacent Association of Apartment Owners of Sea Village, Inc. was filed before the first meeting of the Planning Commission on August 1, 2003. No individual Sea Village owners filed for contested case standing. Since that time, four additional hearings were held before the Planning

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Commission, and the petition for standing in the contested case hearing filed by the Association of Apartment Owners of Sea Village, Inc. was subsequently withdrawn. On July 26, 2004, the property was sold to the current landowners, who notified the Planning Department in writing of their wish to pursue the development as proposed earlier.

The Planning Department sent a letter dated March 23, 2005 to applicant's representative, advising applicant to serve notice of the April 22, 2005 hearing, erroneously telling applicant to give notice of opportunity to submit a written request for contested case procedure, and to intervene as a party. This letter was copied to Messrs. Brian Haney and Charles Buscemi. Applicant's representative contacted the Planning Department and was advised that he did not need to provide the notice of right to seek contested case standing. Applicant proceeded to give notice of the hearing, without the notice of right to seek contested case standing.

Before the April 22, 2005 hearing on this matter, the following owners or residents of the neighboring Sea Village condominium sent letters requesting contested case participation:

- Brian Haney, letter dated April 8, 2005 (received April 18, 2005), with \$100 check
- Charles Buscemi, note received April 18, 2005, with \$100 check
- Mark and Kim Spangler, letter dated April 11, 2005 (received April 18, 2005) with \$100 check
- Jack and Kelly Armstrong, letter dated April 11, 2005 (received April 20, 2005) with \$100 check
- Lowell Zimmerman, letter dated April 14, 2005 (received April 20, 2005), with no check.

Planning Department staff returned these persons' checks by letters dated April 19th or 21st 2005, noting that these persons had not submitted a Petition for Contested Case, and that since this application was first heard by the Planning Commission on August 1, 2003, the deadline for filing a petition for standing in a contested case hearing had passed. The Spanglers and Mr. Zimmerman represented that they were newer owners who did not have opportunity to petition for contested case standing before the first meeting on this matter.

The Planning Commission heard public testimony on the foregoing letters at the April 22, 2005 hearing. The matter was continued to May 20, 2005 to ensure proper

service of notice of the hearings upon neighboring property owners, and to allow applicant and those seeking contested case standing to submit briefing on the matter. Applicant and Robert Kim, legal counsel for Mr. Haney and Mr. Buscemi, agreed to file written statements 10 days prior to the next hearing.

Before the May 20, 2005 hearing, the following persons submitted written requests or Petitions for Standing in a Contested Case ("Petitions") in the form provided by Planning Commission Rules, with a check for \$100:

- Brian Haney (handwritten note received May 12, 2005, no Petition)
- Charles Buscemi, Petition and check received May 12, 2005
- Mark and Kim Spangler, Petition and check received May 16, 2005

These three requesters were notified that their requests for contested case standing would be heard by the Planning Commission at the May 20, 2005 hearing.

Mr. Kim filed his written statement on May 10, 2005. Applicant's attorneys, Cades Schutte, filed their written statement on May 17, 2005. At the April 22, 2005 meeting, Mr. Kim moved to strike applicant's written statement as late; the Chairperson denied the motion, noting that the deadline was for the Commission's convenience, and allowed full argument on the matter.

At the April 22, 2005 meeting, the Planning Commission voted to deny all of the requests for intervention as parties, in whatever form, by Mr. Haney, Mr. Buscemi, the Spanglers, the Armstrongs and Mr. Zimmerman, on the basis that they were untimely pursuant to Planning Commission Rule 4-7, and that the Huggetts have been substituted for the original applicant, Mr. Soto.

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 effect and elimination of planning options. The applicants propose to construct a 3 ½-story, 12-unit multiple-family residential development and related improvements. The proposed development includes parking stalls, landscaping, and recreational amenities including swimming pool, spa, pedestrian walkways, outdoor barbecues and open spaces. Construction is expected to be completed in one phase in approximately 18 months. The estimated cost of the development is \$4 million.

The proposed project will not create significant adverse impacts upon immediately adjacent properties, as surrounding properties are zoned V-1.25 and in residential and commercial uses. A single family residence and the Sun Terra Resort office building is located on the north side of the property, and the Sea Village Condominiums are located south of the site. The property to the east across Alii Drive is vacant and zoned RM-4.

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 subject site is an oceanfront property located on Alii Drive. According to a viewplane study conducted by Dr. Ron Terry, the proposed multi-family project will affect the views from Alii Drive to the shoreline by essentially closing a gap that currently allows view of the nearshore waters and distant points to the north. However, the narrowness of the view corridor precludes any reasonable mitigation measures to avoid such effect. There is a better, unobstructed viewpoint a few hundred feet north of the property. The viewplane of the shoreline towards the property from Kuakini Highway and the Queen Kaahumanu Highway will not be impacted as lands along the shoreline in this area are extensively developed with single and multiple-family residences. The proposed structure will be consistent with the Zoning Code's maximum height limit of 45 feet.

There are no public recreational resources being affected by the project. The project site is not directly tied with the recreational resources of the coastal area, and will not reduce the size of the coastline or other areas used for public recreational uses. The proposed development would not have any adverse impacts to the recreational resources of the area, as the shoreline area fronting the property is very rocky. According to the applicants, the surf break north of the property known as "Tiki's" will not be impacted, as the project will not affect access to this surf break. Therefore, the project will neither restrict access to coastal recreational resources along the shoreline nor will it restrict existing visual viewplanes.

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. County water is available to the site. The project will connect to the County's new wastewater treatment facility at Kealakehe via the existing sewer line in Alii Drive. 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.

An archaeological inventory survey of the subject property was conducted by Dr. Robert Rechtman on March 4, 2003. Due to the extensive grading and development of the property, no archaeological features were discovered on the site. By letter dated June 27, 2003, the State Department of Land and Natural Resources Historic Preservation Division has stated that "previous grubbing/grading has altered the land; thus, no historic properties will be affected by this undertaking." In response to Mrs. Linda Nagai who recalled the presence of a grave at the site, by letter dated September 29, 2003, Dr. Rechtman has stated that "all have seemingly been destroyed by development activities" and recommends that an archaeological monitor be present prior to ground-disturbing activities in the affected area on the parcel.

A biological reconnaissance of the property was conducted in March, 2003 by Dr. Ron Terry. Given the improved nature of the site and the surrounding urban area, Dr. Terry concluded that no adverse botanical impacts would ensue from the development of the property. As such, no known rare, threatened, or endangered species are known to inhabit the parcel or are expected to be discovered on the site. Similarly, the likelihood of any threatened or endangered flora species appears remote.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. The property is not used for access to the mountains or shoreline and no access to these areas will be impacted by the proposed action. Therefore, there will be no disruption of existing public access to the shoreline, as there is no record of a designated public access to the shoreline or mountain areas that traverses the property. The closest public access is located at Kahului Landing approximately 250 feet north of the site. However, as the property is an oceanfront parcel, a condition will be included to provide a 10-foot wide public access along the shoreline. As the property is located in an area subject to coastal wave action and identified as "VE", all construction will be in compliance with Chapter 27, Flood Control, and all regulations of the Federal Emergency Management Agency. The proposed development would not create an increase in coastal flooding under normal rainfall conditions, and on-site drainage systems will be developed to adequately dispose of project-generated surface runoff.

There are no identified historic resources, recreational 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 and the County zoning is Resort (V-1.25). The proposed project will complement the goals, policies and standards of the Economic, Land Use, and Housing 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 Alii Drive, a County maintained roadway with a pavement width of 20 feet within an approximate 50-foot right-of-way. According to the applicants, the traffic generated by the proposed 12 units (10 vehicles per hour in peak periods), falls far below the guideline suggested by the Institute of Transportation Engineers that "a traffic access/impact study be conducted whenever a proposed development will generate 100 or more added (new) peak direction trips to or from the site during the adjacent roadways' peak hours or the development's peak hour." The applicants have provided a copy of the warranty deed for the property that identifies the perpetual easement for the subject property from Alii Drive through TMK: 7-5-19: 12 and 7-5-21: 37. By letter dated January 13, 2005, Vacation Internationale, Inc. (TMK: 7-5-19: 38) intends to grant the applicants an additional minimum four-foot wide easement for vehicular access and utilities for the project.

In view of the 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 in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

The valuable cultural, historical, and natural resources found in the area: The DLNR-HPD has indicated that the property has been previously altered, thus no historic properties will be affected. The archaeological study conducted by Dr. Rechtman did not identify any archaeological features on the site.

Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.

Feasible actions to protect native Hawaiian rights: 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. As stated by the applicant, no valued cultural, historical or natural resources exist on the site and there is no evidence of any traditional customary Native Hawaiian rights being practiced on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

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.

1. The applicants, 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. Final Plan Approval by the Planning Director in accordance with the Zoning Code shall be secured by the applicants 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).
3. A minimum 20-foot wide easement shall be provided for vehicular access and utilities.
4. All development generated runoff shall be disposed of on site and shall 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 Plan Approval. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.

5. 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.
6. The project shall connect to the existing sewer line on Alii Drive, meeting with the approval of the Department of Environmental Management prior to the issuance of a Certificate of Occupancy.
7. 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.
8. A 10-foot wide public access along the shoreline shall be provided, meeting with the approval of the Planning Director prior to receipt of a Certificate of Occupancy.
9. 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-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken. An archaeological monitor shall be present prior to ground disturbing activities in the affected area on the parcel.
10. 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.
11. 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.
12. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

- A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, 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 and 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).
- 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.

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

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.

Mr. Gregory R. Mooers
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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

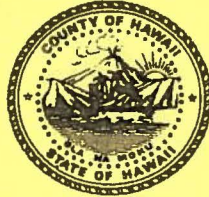
Sincerely,



Fred Galdones, Chairman
Planning Commission

Lhuggettsma03-007pc

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
Ms. Alice Kawaha
Roy A. Vitousek, III
Robert Kim, Esq.
Bobby Jean Leithead-Todd, Esq.
Ivan Torigoe, Esq.
Mark & Kim Spangler
Mr. Brian Haney
Mr. Charles Buschemi
Jack & Kelly Armstrong
Mr. Lowell Zimmerman
Association of Apartment Owners of Sea Village, Inc.



County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

July 7, 2005

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

Dear Mr. Mooers:

Special Management Area Use Permit Application (SMA 03-007)
Applicants: Wesley and Kelley Huggett (formerly Eric Soto)
Request: 12-Unit Condominium Project and Related Improvements
TMK: 7-5-19:30

The Planning Commission at its duly held public hearing on June 17, 2005, voted to approve the above-referenced application for a Special Management Area Use Permit application to allow the construction of a three and one-half story, 45-foot high, 12-unit multi-family residential development and related improvements on approximately 15,203 square feet of land. The property is located on the west (makai) side of Alii Drive, adjacent to and north of the Sea Village Condominium complex, Kahului, 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.

This application was originally filed on May 30, 2003, by then applicant Eric Soto, and a petition for standing in a contested case by the adjacent Association of Apartment Owners of Sea Village, Inc. was filed before the first meeting of the Planning Commission on August 1, 2003. No individual Sea Village owners filed for contested case standing. Since that time, four additional hearings were held before the Planning

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Commission, and the petition for standing in the contested case hearing filed by the Association of Apartment Owners of Sea Village, Inc. was subsequently withdrawn. On July 26, 2004, the property was sold to the current landowners, who notified the Planning Department in writing of their wish to pursue the development as proposed earlier.

The Planning Department sent a letter dated March 23, 2005 to applicant's representative, advising applicant to serve notice of the April 22, 2005 hearing, erroneously telling applicant to give notice of opportunity to submit a written request for contested case procedure, and to intervene as a party. This letter was copied to Messrs. Brian Haney and Charles Buscemi. Applicant's representative contacted the Planning Department and was advised that he did not need to provide the notice of right to seek contested case standing. Applicant proceeded to give notice of the hearing, without the notice of right to seek contested case standing.

Before the April 22, 2005 hearing on this matter, the following owners or residents of the neighboring Sea Village condominium sent letters requesting contested case participation:

- Brian Haney, letter dated April 8, 2005 (received April 18, 2005), with \$100 check
- Charles Buscemi, note received April 18, 2005, with \$100 check
- Mark and Kim Spangler, letter dated April 11, 2005 (received April 18, 2005) with \$100 check
- Jack and Kelly Armstrong, letter dated April 11, 2005 (received April 20, 2005) with \$100 check
- Lowell Zimmerman, letter dated April 14, 2005 (received April 20, 2005), with no check.

Planning Department staff returned these persons' checks by letters dated April 19th or 21st 2005, noting that these persons had not submitted a Petition for Contested Case, and that since this application was first heard by the Planning Commission on August 1, 2003, the deadline for filing a petition for standing in a contested case hearing had passed. The Spanglers and Mr. Zimmerman represented that they were newer owners who did not have opportunity to petition for contested case standing before the first meeting on this matter.

The Planning Commission heard public testimony on the foregoing letters at the April 22, 2005 hearing. The matter was continued to May 20, 2005 to ensure proper

service of notice of the hearings upon neighboring property owners, and to allow applicant and those seeking contested case standing to submit briefing on the matter. Applicant and Robert Kim, legal counsel for Mr. Haney and Mr. Buscemi, agreed to file written statements 10 days prior to the next hearing.

Before the May 20, 2005 hearing, the following persons submitted written requests or Petitions for Standing in a Contested Case ("Petitions") in the form provided by Planning Commission Rules, with a check for \$100:

- Brian Haney (handwritten note received May 12, 2005, no Petition)
- Charles Buscemi, Petition and check received May 12, 2005
- Mark and Kim Spangler, Petition and check received May 16, 2005

These three requesters were notified that their requests for contested case standing would be heard by the Planning Commission at the May 20, 2005 hearing.

Mr. Kim filed his written statement on May 10, 2005. Applicant's attorneys, Cades Schutte, filed their written statement on May 17, 2005. At the April 22, 2005 meeting, Mr. Kim moved to strike applicant's written statement as late; the Chairperson denied the motion, noting that the deadline was for the Commission's convenience, and allowed full argument on the matter.

At the April 22, 2005 meeting, the Planning Commission voted to deny all of the requests for intervention as parties, in whatever form, by Mr. Haney, Mr. Buscemi, the Spanglers, the Armstrongs and Mr. Zimmerman, on the basis that they were untimely pursuant to Planning Commission Rule 4-7, and that the Huggetts have been substituted for the original applicant, Mr. Soto.

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 effect and elimination of planning options. The applicants propose to construct a 3 ½-story, 12-unit multiple-family residential development and related improvements. The proposed development includes parking stalls, landscaping, and recreational amenities including swimming pool, spa, pedestrian walkways, outdoor barbecues and open spaces. Construction is expected to be completed in one phase in approximately 18 months. The estimated cost of the development is \$4 million.

The proposed project will not create significant adverse impacts upon immediately adjacent properties, as surrounding properties are zoned V-1.25 and in residential and commercial uses. A single family residence and the Sun Terra Resort office building is located on the north side of the property, and the Sea Village Condominiums are located south of the site. The property to the east across Alii Drive is vacant and zoned RM-4.

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 subject site is an oceanfront property located on Alii Drive. According to a viewplane study conducted by Dr. Ron Terry, the proposed multi-family project will affect the views from Alii Drive to the shoreline by essentially closing a gap that currently allows view of the nearshore waters and distant points to the north. However, the narrowness of the view corridor precludes any reasonable mitigation measures to avoid such effect. There is a better, unobstructed viewpoint a few hundred feet north of the property. The viewplane of the shoreline towards the property from Kuakini Highway and the Queen Kaahumanu Highway will not be impacted as lands along the shoreline in this area are extensively developed with single and multiple-family residences. The proposed structure will be consistent with the Zoning Code's maximum height limit of 45 feet.

There are no public recreational resources being affected by the project. The project site is not directly tied with the recreational resources of the coastal area, and will not reduce the size of the coastline or other areas used for public recreational uses. The proposed development would not have any adverse impacts to the recreational resources of the area, as the shoreline area fronting the property is very rocky. According to the applicants, the surf break north of the property known as "Tiki's" will not be impacted, as the project will not affect access to this surf break. Therefore, the project will neither restrict access to coastal recreational resources along the shoreline nor will it restrict existing visual viewplanes.

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. County water is available to the site. The project will connect to the County's new wastewater treatment facility at Kealakehe via the existing sewer line in Alii Drive. 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.

An archaeological inventory survey of the subject property was conducted by Dr. Robert Rechtman on March 4, 2003. Due to the extensive grading and development of the property, no archaeological features were discovered on the site. By letter dated June 27, 2003, the State Department of Land and Natural Resources Historic Preservation Division has stated that "previous grubbing/grading has altered the land; thus, no historic properties will be affected by this undertaking." In response to Mrs. Linda Nagai who recalled the presence of a grave at the site, by letter dated September 29, 2003, Dr. Rechtman has stated that "all have seemingly been destroyed by development activities" and recommends that an archaeological monitor be present prior to ground-disturbing activities in the affected area on the parcel.

A biological reconnaissance of the property was conducted in March, 2003 by Dr. Ron Terry. Given the improved nature of the site and the surrounding urban area, Dr. Terry concluded that no adverse botanical impacts would ensue from the development of the property. As such, no known rare, threatened, or endangered species are known to inhabit the parcel or are expected to be discovered on the site. Similarly, the likelihood of any threatened or endangered flora species appears remote.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. The property is not used for access to the mountains or shoreline and no access to these areas will be impacted by the proposed action. Therefore, there will be no disruption of existing public access to the shoreline, as there is no record of a designated public access to the shoreline or mountain areas that traverses the property. The closest public access is located at Kahului Landing approximately 250 feet north of the site. However, as the property is an oceanfront parcel, a condition will be included to provide a 10-foot wide public access along the shoreline. As the property is located in an area subject to coastal wave action and identified as "VE", all construction will be in compliance with Chapter 27, Flood Control, and all regulations of the Federal Emergency Management Agency. The proposed development would not create an increase in coastal flooding under normal rainfall conditions, and on-site drainage systems will be developed to adequately dispose of project-generated surface runoff.

There are no identified historic resources, recreational 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 and the County zoning is Resort (V-1.25). The proposed project will complement the goals, policies and standards of the Economic, Land Use, and Housing 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 Alii Drive, a County maintained roadway with a pavement width of 20 feet within an approximate 50-foot right-of-way. According to the applicants, the traffic generated by the proposed 12 units (10 vehicles per hour in peak periods), falls far below the guideline suggested by the Institute of Transportation Engineers that "a traffic access/impact study be conducted whenever a proposed development will generate 100 or more added (new) peak direction trips to or from the site during the adjacent roadways' peak hours or the development's peak hour." The applicants have provided a copy of the warranty deed for the property that identifies the perpetual easement for the subject property from Alii Drive through TMK: 7-5-19: 12 and 7-5-21: 37. By letter dated January 13, 2005, Vacation Internationale, Inc. (TMK: 7-5-19: 38) intends to grant the applicants an additional minimum four-foot wide easement for vehicular access and utilities for the project.

In view of the 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 in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

The valuable cultural, historical, and natural resources found in the area: The DLNR-HPD has indicated that the property has been previously altered, thus no historic properties will be affected. The archaeological study conducted by Dr. Rechtman did not identify any archaeological features on the site.

Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.

Feasible actions to protect native Hawaiian rights: 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. As stated by the applicant, no valued cultural, historical or natural resources exist on the site and there is no evidence of any traditional customary Native Hawaiian rights being practiced on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

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.

1. The applicants, 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. Final Plan Approval by the Planning Director in accordance with the Zoning Code shall be secured by the applicants 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).
3. A minimum 20-foot wide easement shall be provided for vehicular access and utilities.
4. All development generated runoff shall be disposed of on site and shall 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 Plan Approval. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.

5. 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.
6. The project shall connect to the existing sewer line on Alii Drive, meeting with the approval of the Department of Environmental Management prior to the issuance of a Certificate of Occupancy.
7. 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.
8. A 10-foot wide public access along the shoreline shall be provided, meeting with the approval of the Planning Director prior to receipt of a Certificate of Occupancy.
9. 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-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken. An archaeological monitor shall be present prior to ground disturbing activities in the affected area on the parcel.
10. 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.
11. 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.
12. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

- A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, 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 and Zoning Code.
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Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

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.

Mr. Gregory R. Mooers
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Sincerely,



Fred Galdones, Chairman
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