

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

October 17, 2005

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

Dear Mr. Mooers:

Special Management Area Use Permit Application (SMA 05-004)
Request: Two 3-Story Mixed Use (Residential-Commercial) and a
2-Story Commercial Office Building
Applicant: Phil Tinguely
Tax Map Key: 7-5-18:95

The Planning Commission at its duly held public hearing on September 30, 2005, voted to accept the withdrawal of Kona Pacific AOA's request for a contested case hearing. The Commission then approved the above-referenced application to allow the construction of two three-story mixed use buildings, which include eight residential suites, and a two-story commercial office building on a 3-acre property. The property is located between Kuakini Highway and Walua Road, approximately 1,500 feet northwest of the Kuakini Highway and Walua Road junction, Waiaha 1st, North Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Management Area Use Permit to allow the construction of two three-story mixed use buildings, which includes eight office/commercial suites and eight residential suites (Buildings A & B), a two-story commercial office building, which includes eight office/commercial suites (Building C), and related improvements including related parking and landscaping on a 3-acre parcel within the Special Management Area.

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. There have been five other developments consisting mainly of 2 and 3-story office/commercial and residential buildings permitted in this area within the last 2 years. The applicant is proposing to develop two three-story mixed use buildings and a two story building, which will include sixteen office/ commercial units and eight residential units, along with parking and landscaping improvements on a 3-acre parcel within the Special Management Area. The project cost is estimated at \$4,000,000.00.

The proposed project, along with the five other recently approved developments, will not create significant adverse impacts upon adjacent properties. The properties to the south are zoned Village Commercial (CV-10) and are being developed with similar uses proposed for the project. The Kona Mansion V apartment buildings are located to the north of the proposed project. The Alii Cove 200-unit multi-family complex, which is zoned Multiple-Family Residential (RM-4), is located to the west (makai) across Walua Road. Lastly, Kuakini Highway is located to the east at a higher elevation. The proposed development will not substantially affect scenic vistas or viewplanes of nearby residents as the development will be required not to exceed the height limit of 30 feet for all proposed structures. The proposed development will not have an adverse impact on coastal recreational resources and coastal ecosystems, as the subject property is located mauka of Alii Drive approximately 800 feet from the shoreline.

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

The proposed project is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The purpose of Chapter 205A, Hawaii Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The Department of Water Supply commented that the applicant submits water demand calculations to determine that amount of water the proposed development will need. DWS anticipates that the proposed development will need at least 8 additional units of water. DWS also requires the installation of a backflow preventer (reduced pressure type) by a licensed contractor. A condition of approval will be included to reflect the Department of Water Supply's request. The applicant will be required to connect to the County wastewater system. Any potential runoff or discharge that could reach ocean waters can be handled by on-site improvements consistent with the requirements of the Department of Public Works. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations and proper construction practices. Air emissions generated during the construction phase for the proposed project can be mitigated by existing construction regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects upon nearby coastal resources or the surrounding environment. Additional conditions of approval will be included relating to wastewater, solid waste and public safety to ensure that impacts on coastal resources are minimized.

The site was surveyed by Dr. Paul Rosendahl and the subsequent data recovery was conducted by Dr. Alan Haun in September 2001. The data recovery plan was reviewed and approved by the State Historic Preservation Division.

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

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

This proposed development will complement the goals, policies and standards of, among others, the Land Use, Housing and Economic Elements of the

General Plan. The proposed development will add to the housing inventory for the district of North Kona. This project will be in harmony with the character of the surrounding properties and result in an intensity of land utilization no higher than as permitted or as otherwise specified for the district in which this proposed development occurs.

While the proposed development will not have a direct impact upon coastal recreational resources, review of developments within the Special Management Area must also consider the cumulative impacts of such developments upon these resources. This project, as well as the previous approved projects in this area, will diminish the shoreline viewplane from Kuakini Highway along the subject properties, yet will not diminish the shoreline viewplane from properties located at a higher elevation than Kuakini Highway.

Access to the property is from Walua Road, a County roadway. The Department of Public Works (DPW) requires that Walua Road be improved to a 60-foot right-of-way as identified in Ordinance No. 03 18 (REZ 996) on TMK: 7-5-018: 008 which required the widening and improvement to the mauka side of Walua Road with curb, gutter and sidewalk. DPW also commented that the applicant should be required to facilitate the completion of the Walua Road improvements required under Ord. No. 03 18 including any subdivision and dedication of a roadway lot to the County in a timely manner. Therefore, these requests will be added as conditions of approval.

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

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

- A Botanical Reconnaissance of the neighboring sites was conducted in February of 2005, by Ron Terry, Ph.D.
- An Archaeological Inventory Survey conducted by Paul H. Rosendahl, Ph.D. in September 2001.

- An Archaeological Data Recovery Plan conducted by Haun & Associates in September of 2001 and approved by DLNR's April 4, 2004 letter to Dr. Alan Haun, Haun & Associates that states "our comments have been satisfactorily addressed and the plan now meets with our approval."

The valuable cultural, historical, and natural resources found in the Special Management Area Use permit area: An Archaeological Inventory Survey was conducted by Paul H. Rosendahl, Ph.D. of TMK: 7-5-18:7, prior to the current subdivision that includes parcel 95. The survey identified 27 sites consisting of 19 identified during the survey and 8 previously recorded during the Ali'i Drive Sewer Project in 1994. A total of 41 features were identified, consisting of 12 modified outcrops, 9 walls, 4 mounds, 3 lava tubes, 3 alignments, 2 platforms, 2 cupboards, and one of each of the following, enclosure, terrace, lava blister, shrine, pavement, and papamu. The inventory survey report assessed all of the sites as significant for their information content. Two sites, a possible shrine (Site 22042, Feature B) and a cave containing possible burial mounds (Site 15515), were provisionally assessed as significant for their cultural value pending further investigation. These two sites, and five other sites, were recommended for data recovery. An Archaeological Data Recovery Plan conducted by Haun & Associates in September of 2001 was submitted and approved by DLNR's April 4, 2004 letter to Dr. Alan Haun, Haun & Associates, which stated "our comments have been satisfactorily addressed and the plan now meets with our approval."

Based on a Botanical Reconnaissance conducted by Ron Terry, Ph.D of the property in February of 2005, no adverse botanical impacts would result from the development of the property.

Possible adverse effect of impairment of valued resources: The property has already gone through the historic preservation review process and mitigation has been completed. Thus, no historic properties will be affected by this undertaking.

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

Based on the above findings, it is determined that the proposed development and related improvements will not have any substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and

Rule No. 9 of the Planning Commission relating to the Special Management Area. Approval of this request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant, its successors or assigns shall fulfill their portion of all applicable conditions of Change of Zone Ordinance No. 03 18, including facilitating the completion of the Walua Road improvements required and any subdivision and dedication of a roadway lot to the County in a timely manner.
3. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the water demand calculations which should include all uses including dwelling units and landscaping, and submit a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within ninety days from the effective date of this permit. The applicant shall install a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property, meeting with the approval of the Department of Water Supply.
4. Construction of the proposed development shall be completed within five (5) years from the date of this permit. Prior to construction, the applicant shall secure Final Plan Approval from the Planning Director in accordance with Sections 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and proposed structures, landscaping, paved driveway access, and parking stalls associated with the proposed development. Landscaping shall be provided as required by Planning Department Rule 17 (Landscaping Requirements).
5. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of a construction permit. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

6. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
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. All wastewater shall be disposed into the County sewer system.
9. An Archaeological Preservation, Data Recovery Report and Burial Treatment Plan shall be submitted for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD). A copy of the approved Final Archaeological Preservation and Burial Treatment Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval review or prior to the issuance of any land alteration permits, whichever occurs first. The applicant shall implement conditions in the Burial Mitigation Plan before ground alterations commence.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
11. 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.
12. The applicant shall create a 10-foot wide mauka-makai pedestrian access along the northern boundary of the property as long as it is consistent with Historic Preservation requirements.

13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
14. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
15. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
 - 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.

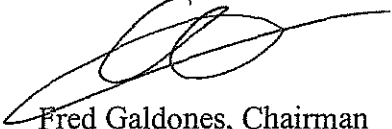
Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

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.


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

Sincerely,



Fred Galtones, Chairman
Planning Commission



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cc: Kona Pacific AOA
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Bobby Jean Leithead-Todd, Esq.
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Department of Land and Natural Resources/HPD-Kona
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