



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

August 1, 2006

Christopher L. Lau, President
Royal Alii, LLC
Towne Development of Hawaii, Inc.
220 S. King Street, Suite 2170
Honolulu, HI 96813

Dear Mr. Lau:

Special Management Area Use Permit Application (SMA 05-000007)
Request: 19 Single Family Residential Units and Related Uses
Applicant: Royal Alii, LLC
Tax Map Key: 7-7-4:57 and 58

The Planning Commission at its duly held public hearing on July 21, 2006, voted to approve the above-referenced application to allow the development of a 19-unit single family residential development and related uses. The property is located on the east (mauka) side of Alii Drive, across from the Alohi Kai Subdivision and Kamoia Point, Kaunamalu, North Kona, Hawaii.

Approval of this request is based on the following:

The applicant proposes to develop a 19-unit single-family residential development and related uses. The site plan indicates the following:

- Lot sizes ranging from approximately 5,246 to 10,177 square feet.
- House sizes ranging from 1,500 square feet to 2,400 square feet in one and two-story dwellings.
- One-story dwellings approximately 18 feet 8 inches in height.
- Two-story dwellings approximately 27 feet 2 inches in height.
- Two parking spaces per lot.
- Underground utilities.
- Private roadways.
- Curb, gutters and sidewalks.
- Gated entry.

Hawai'i County is an Equal Opportunity Provider and Employer

AUG 01 2006

Christopher L. Lau, President
Royal Alii, LLC
Page 2

- An approximately 120 to 180-foot wide archaeological easement mauka of Alii Drive to preserve the existing archaeological sites on the project site.
- One driveway access from Alii Drive.

In addition to the proposed 19 single-family residential lots, three (3) additional lots will contain the archaeological preservation areas and roadways. The applicant has filed a Planned Unit Development (PUD) application to allow the development. The PUD application requests variances from Chapter 25 (Zoning Code) and Chapter 23 (Subdivision Code). As the SMA Use Permit application must be approved first, the PUD application will be processed administratively after action is taken on this SMA Use Permit.

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse 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 proposed project will not create significant adverse impacts upon nearby and immediately adjacent properties as the area is developed with single-family and multiple-family residences, and other urban uses. Surrounding properties to the north, east and south are zoned Agricultural (A-5a), and properties to the west across Alii Drive are zoned Resort (V-1.25). A small portion of TMK: 7-7-4: 61 (the parcel adjacent to the property to the south) is zoned RS-7.5. The Alohi Kai Subdivision, composed of single-family lots, is located across or makai of Alii Drive. The Hoomalu Subdivision is located to the east and south of the project area.

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. The proposed development will not substantially affect scenic vistas or viewplanes of nearby residents nor have an adverse impact on coastal recreational or visual resources to the shoreline and coastal ecosystems. The property is located mauka of Alii Drive and will not restrict access to coastal recreational resources along the shoreline nor will it

restrict existing visual viewplanes from Alii Drive. The applicant states that the project site is sufficiently distant from the shoreline to interfere with any views of the coastal areas from Kuakini Highway. In the supplemental information (Visual Impact Assessment) included with the application, the applicant states that the visual impact to views of the shoreline from Kuakini Highway is minor due to "the many existing and planned structures interposed between the proposed structures and the shoreline." The assessment also states that the proposed project "would have no effect on views from the Alii Drive to the shoreline, and because of the archaeological buffer, there would be negligible to beneficial (if native landscaping is installed in the archaeological area) effects on views mauka from Alii Drive."

Air quality in the area is predominantly affected by emissions from natural and vehicular sources. 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. There are no identified recreational resources or 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 property is located on the mauka side of Alii Drive and will not be impacted by coastal hazard and beach erosion. No scenic or open space resources to the shoreline or coastal view plane or coastal ecosystem will be negatively impacted by the proposed action. There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

County water is available to the site. The project will connect to the County sewer 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. Conditions of approval will be included relating to wastewater, solid waste and public safety to ensure that impacts on coastal resources are minimized.

Christopher L. Lau, President
Royal Alii, LLC
Page 4

According to the applicant, an Archaeological Inventory Survey conducted by Haun & Henry (2002) documented a total of 21 sites comprised of 75 individual features. Two burial sites were identified on the site. The applicant has concurred with the Hawaii Island Burial Council's determination to preserve in place the burials within these sites. An Archaeological Burial Treatment Plan (August 2004) was prepared by Archaeological Consultants of the Pacific, Inc. By letter dated November 10, 2004, the State Historic Preservation Division (SHPD) acknowledged the Hawaii Island Burial Council's determination to preserve in place the burials within the project site. Both the Archaeological Preservation Plan (revised December 2004) and Archaeological Monitoring Plan (revised December 2004) by Archaeological Consultants of the Pacific, Inc. were accepted by the SHPD. According to the applicant, an Archaeological Data Recovery Report prepared by Archaeological Consultants of the Pacific, Inc. dated October 2005 has been transmitted to the SHPD. According to the site plan submitted by the applicant, an approximately 120 to 180-foot wide archaeological easement on the property is proposed to preserve the archaeological sites on the project site.

According to the applicant, there are no known cultural resources associated with the property. The Archaeological Preservation Plan and Mitigation Plan conducted by Archaeological Consultants of the Pacific, Inc. (revised December 2004) states that "it is believed that the Judd Trail [Site 6343] is actually off the subject property."

A Flora and Fauna Report was prepared by Ron Terry, Ph. D. in December 2004. A total of 32 plant species were identified, of which only two, the ilima and uhaloa, are indigenous to the Hawaiian Islands. No native birds were identified during the survey. The study concluded that no threatened or endangered plant or animal species are present or would be expected to be present on the project site.

The proposed development is consistent with the County General Plan and the Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map establishes the basic urban and non-urban form for areas within the County. The project area is designated Medium Density Urban by the LUPAG map. The Medium Density Urban designation includes village and neighborhood commercial and single family and multiple family residential and related functions. Thus, the proposed development would be consistent with the LUPAG Map designation. The property is presently zoned Single-Family Residential 7,500 square feet (RS-7.5) by the County.

This proposed development would complement, among others, the goals, policies and standards of the Land Use and Housing Elements of the General Plan. The project will add to the variety of housing inventory for the district of North Kona, and provide housing in areas that are appropriately located and serviced. The proposed project will be in harmony with the character of the surrounding neighborhood and result in an intensity

of land utilization no higher than as permitted or as otherwise specified for the district in which this proposed development occurs. The Kona Regional Plan adopted by the Hawaii County Planning Commission by Resolution No. 1-84 identifies the project site as R-6 (residential uses) with a density of six units per acre.

One access is proposed from Alii Drive, a two-lane collector street with an approximately 22-foot wide pavement and 8-foot wide shoulders within an approximately 50-foot right-of-way. The Department of Public Works (DPW) recommends that Alii Drive be widened to a 60-foot right-of-way as indicated in the General Plan, in addition to a 5-foot wide future road widening setback along the Alii Drive frontage of the properties. The DPW further recommends that the applicant provide a widened shoulder along the Alii Drive frontage extending to the right-of-way property line in the interest of providing parking for the shoreline public access makai of the project and pedestrian and bicyclist safety.

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: An Archaeological Preservation Plan (revised December 2004) and Archaeological Monitoring Plan (revised December 2004) by Archaeological Consultants of the Pacific, Inc. were accepted by the HPD. An Archaeological Data Recovery Report dated October 2005 has been transmitted to the HPD. The two burials on the site will be preserved in place.

A Flora and Fauna Report was prepared by Ron Terry, Ph.D. in December 2004. A total of 32 plant species were identified, of which only two, the ilima and uhaloa, are indigenous to the Hawaiian Islands. No native birds were identified during the survey. The study concluded that no threatened or endangered plant or animal species are present or would be expected to be present on the project site.

The valuable cultural, historical, and natural resources found in the area: The DLNR-HPD has acknowledged the Hawaii Island Burial Council's determination to preserve in place the burials within the project site. The applicant will be required to notify the DLNR-HPD should any undiscovered remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered on the site. Subsequent work shall be allowed to proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken. An Archaeological Preservation Plan and Mitigation Plan conducted by Archaeological Consultants of the Pacific, Inc. (revised December 2004) states that "it is

believed that the Judd Trail [Site 6343] is actually off the subject property."

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: The property is located mauka of Alii Drive, and will not be impacted by coastal hazard and beach erosion. There are no identified recreational resources or 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. 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 applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval of this permit.
2. Final Subdivision Approval shall be secured within five (5) years from the effective date of this permit.
3. The applicant shall provide a 5-foot wide road widening setback along the Alii Drive frontage and dedicate it to the county at no cost upon request by the Department of Public Works. The applicant shall provide a widened shoulder along the Alii Drive frontage, extending to the right-of-way property line, if required by and meeting with the approval of the Department of Public Works. Provide pavement widening, transitions, signs and markings, drainage improvements and relocation of utilities, as required by the Department of Public Works.
4. Install street lights, signs and markings, meeting with the approval of the Department of Public Works, Traffic Division.

5. Access to Alii Drive, including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works.
6. Any vehicular security gate shall be installed more than 40 feet from the Alii Drive right-of-way with a turnaround on the Alii Drive side of the gate.
7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
8. The proposed development shall connect to the County sewer system.
9. Comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
10. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
12. An Archaeological Data Recovery Report shall be submitted for the review and approval of the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD). A copy of the approved final report shall be submitted to the Planning Director prior to the submittal of plans for subdivision review or the issuance of any land alteration permits, whichever occurs first.
13. Prior to Final Subdivision Approval, a metes and bounds survey of the Judd Trail shall be prepared by a licensed surveyor to locate the Judd Trail in the vicinity of the subject property from Alii Drive to a point near the southeast corner of the applicant's property. The survey shall be submitted to the Planning Director. Subject to the approval of the State, the applicant shall stabilize the existing remnants of the Judd Trail, which shall consist of stabilizing the stone walls and removing invasive plants. Upon request of the State, the applicant shall quitclaim to the State any portions of the Judd Trail that are within their property boundaries. A 10-foot wide buffer easement shall be established along the southern boundary of the property not in the preservation area as a "no build" buffer zone.

14. The archaeological features on the western or makai portion of the project site, as identified in the approved preservation plan, shall be preserved and made a part of the project's open space buffer from Alii Drive. The open space buffer shall be a 10-foot buffer easement for no building purposes, other than for the reconstruction and restoration of the Judd Trail wall. The two burial sites (Feature 8021: A and Site 23556) shall be preserved "as is." A landscaping buffer shall be placed surrounding the burial sites, and the burial sites shall be incorporated into the project's landscaping/open space feature. Access to the burial sites' descendants shall be allowed, consistent with the requirements of the Archaeological Burial Treatment Plan approved by the DLNR-HPD.
15. Should any undiscovered 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-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.
16. The U.S. Department of Army Corps of Engineers shall be contacted to identify whether a Federal Permit (including a Department of Army permit) is required for this project. The Planning Director shall be notified in writing as to whether such permit is required for the development of the project.
17. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
18. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
19. An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.

Christopher L. Lau, President
Royal Alii, LLC
Page 9

- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.
- 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.

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

Sincerely,



C. Kimo Alameda, Chairman
Planning Commission

Lroyalaliisma05-007PC

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
Subdivision Section
Stephen J. Menezes, Esq.

William P. Kenoi
Mayor



Keith 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

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AUG 11 2016

Mr. Peter J. K. Dahlberg, PE
Aina Engineers, Inc.
P. O. Box 81
Hōlualoa, HI 96725

Dear Mr. Dahlberg:

SUBJECT: Amendment to Special Management Area Use Permit No. 05-000007
Applicant: Royal Ali'i, LLC
Request: Amendment to Condition No. 2 (Time Extension to Secure Final Subdivision Approval)
Tax Map Key: 7-7-004:057 & 058

The Leeward Planning Commission, at its duly held public hearing on July 21, 2016, considered the above-referenced request to amend Condition No. 2 (additional time to secure Final Subdivision Approval) of Special Management Area Use Permit No. 05-000007. The properties is located on the east (mauka) side of Ali'i Drive, across from the 'Alohi Kai Subdivision and Kamo Point, Kaumalumalu, North Kona, Hawai'i.

A Petition for Standing in a Contested Case Hearing was received from Petitioner, Paula McMichael on this matter. The Commission subsequently voted to deny the Petitioner's request for Intervention.

Approval of this amendment is subject to the following amended conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval of this permit.

AUG 11 2016

2. Final Subdivision Approval shall be secured within five (5) years from the effective date of this amended permit.
3. The applicant shall provide a 5-foot wide road widening setback along the Ali'i Drive frontage and dedicate it to the county at no cost upon request by the Department of Public Works. The applicant shall provide a widened shoulder along the Ali'i Drive frontage, extending to the right-of-way property line, if required by and meeting with the approval of the Department of Public Works. Provide pavement widening, transitions, signs and markings, drainage improvements and relocation of utilities, as required by the Department of Public Works.
4. Install street lights, signs and markings, meeting with the approval of the Department of Public Works, Traffic Division.
5. Access to Ali'i Drive, including the provision of adequate sight distances, shall meet with the approval of the Department of Public Works.
6. Any vehicular security gate shall be installed more than 40 feet from the Ali'i Drive right-of-way with a turnaround on the Ali'i Drive side of the gate.
7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared prior to the issuance of any construction permit and the recommended drainage system shall be constructed, meeting with the approval of the Department of Public Works, prior to final subdivision construction approval or dwelling occupancy.
8. The proposed development shall connect to the County sewer system.
9. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
10. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.

11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
12. An Archaeological Data Recovery Report shall be submitted for the review and approval of the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD). A copy of the approved final report shall be submitted to the Planning Director prior to the submittal of plans for subdivision review or the issuance of any land alteration permits, whichever occurs first.
13. **Prior to Final Subdivision Approval, a metes and bounds survey of the Judd Trail shall be prepared by a licensed surveyor to locate the Judd Trail in the vicinity of the subject property from Ali'i Drive to a point near the southeast corner of the applicant's property. The survey shall be submitted to the Planning Director. Subject to the approval of the State, the applicant shall stabilize the existing remnants of the Judd Trail, which shall consist of stabilizing the stone walls and removing invasive plants. Upon request of the State, the applicant shall quitclaim to the State any portions of the Judd Trail that are within their property boundaries. A 10-foot wide buffer easement shall be established along the southern boundary of the property not in the preservation area as a "no build" buffer zone.**
14. The archaeological features on the western or makai portion of the project site, as identified in the approved preservation plan, shall be preserved and made a part of the project's open space buffer from Ali'i Drive. The open space buffer shall be a 10-foot buffer easement for no building purposes, other than for the reconstruction and restoration of the Judd Trail wall. The two burial sites (Feature 8021: A and Site 23556) shall be preserved "as is." A landscaping buffer shall be placed surrounding the burial sites, and the burial sites shall be incorporated into the project's landscaping/open space feature. Access to the burial sites' descendants shall be allowed, consistent with the requirements of the Archaeological Burial Treatment Plan approved by the DLNR-HPD.
15. Should any undiscovered 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-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.

16. The U.S. Department of Army Corps of Engineers shall be contacted to identify whether a Federal Permit (including a Department of Army permit) is required for this project. The Planning Director shall be notified in writing as to whether such permit is required for the development of the project.
17. **The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.**
18. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and extent to which the conditions of approval are being satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
19. **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.

[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.

Mr. Peter J. K. Dahlberg, PE
Aina Engineers, Inc.
Page 5

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8142.

Sincerely,



Keith F. Unger, Chairman
Leeward Planning Commission

L:RoyalaliiamendSMA05-007wpc2
Enclosure: PC Findings

cc: Mr. Larry Smith, Royal Ali'i, LLC
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State DLNR-HPD
Planning Department - Kona
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

ROYAL ALI'I LLC

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 05-000007

The applicant, Royal Ali'i LLC, is requesting a five (5)-year time extension to comply with Condition No. 2 (time to secure Final Subdivision Approval) of Special Management Area Use Permit No. 05-007. SMA Use Permit No. 05-007 was originally approved on July 21, 2006 to allow a 19-unit, single-family residential subdivision and related uses. The properties are located on the east (mauka) side of Ali'i Drive, across from the 'Alohi Kai Subdivision and Kamoia Point, Kaunialumalu, North Kona, Hawai'i, TMK: 7-7-004:057 and 058. The site plan submitted with the original application indicated the project would consist of the following:

- Lot sizes ranging from approximately 5,246 to 10,177 square feet.
- House sizes ranging from 1,500 square feet to 2,400 square feet in one and two-story dwellings.
- One-story dwellings approximately 18 feet 8 inches in height.
- Two-story dwellings approximately 27 feet 2 inches in height.
- Two parking spaces per lot.
- Underground utilities.
- Private roadways.
- Curb, gutters and sidewalks.
- Gated entry.
- An approximately 120 to 180-foot wide archaeological easement mauka of Ali'i Drive to preserve the existing archaeological sites on the project site.
- One driveway access from Ali'i Drive.

Along with the approval of the SMA Permit, the applicant has also received tentative subdivision approval and approval for a Planned Unit Development (PUD). The PUD approved variances from Chapter 25 (Zoning Code) and Chapter 23 (Subdivision Code). In addition to the proposed 19 single-family residential lots, there will be three (3) additional lots that will contain archaeological preservation areas and roadways.

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. Previously, the proposed development was reviewed against the guidelines for granting a Special Management Area Use Permit by the Planning Commission and received approval with conditions on July 21, 2006. In summary, the Planning Commission found that 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.

There are no identified recreational resources or public access to the shoreline, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. The property is located on the mauka side of Ali'i Drive and will not be impacted by coastal hazard and beach erosion. No scenic or open space resources to the

shoreline or coastal view plane or coastal ecosystem will be negatively impacted by the proposed action. There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

Additionally, the Planning Commission found that the proposed project will not create significant adverse impacts upon nearby and immediately adjacent properties as the area is **developed with single-family and multiple-family residences, and other urban uses.** Surrounding properties to the west (makai) across Ali'i Drive consist of single-family lots within the 'Alohi Kai Subdivision, which is zoned Resort (V-1.25). To the east and south of the project area is the Ho'omalau Subdivision, which is zoned A-5a and consists of farm dwellings. To the southwest on the makai side of Ali'i Drive are single-family residences, which are zoned RS-7.5. To the north of the project site is vacant land zoned A-5a and properties zoned RM-1.5 and V-1.25.

One access is proposed from Ali'i Drive, a two-lane collector street with an approximately 22-foot wide pavement and 8-foot wide shoulders within an approximately 50-foot right-of-way. The Department of Public Works (DPW) recommends that Ali'i Drive be widened to a 60-foot right-of-way as indicated in the General Plan, in addition to a 5-foot wide future road widening setback along the Ali'i Drive frontage of the properties. The DPW further recommends that the applicant provide a widened shoulder along the Ali'i Drive frontage extending to the right-of-way property line in the interest of providing parking for the shoreline public access makai of the project and pedestrian and bicyclist safety. These recommendations have been incorporated into Condition No. 3 of SMA Use Permit No. 05-007.

County water is available to the site. The project will connect to the County sewer 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. Conditions of approval already exist in the permit relating to wastewater, solid waste and public safety to ensure that impacts on coastal resources are minimized.

The amendment request 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. The applicant requires additional time due to the ongoing review of the Cultural Impact Assessment (CIA). The original CIA had to be revised to include information regarding the location of the remnants of the Judd Trail on the project site. The revised CIA included an ethnographic/cultural study of previous land uses and settlement patterns for the area and was submitted to DLNR-SHPD for review, for which the applicant has not received any comments or approvals. Upon approval of the assessment, the applicant can proceed to map the Judd Trail remnants as required by the SMA permit. Additionally, the recent economic recession has diminished the type of financing required for this type of project. The applicant has recently received indications that financing is available to proceed. Based on the above information, it has been determined that non-compliance was a result of conditions that could not have been foreseen and were beyond the control of the applicant.

The granting of the amendment request would not be contrary to the General Plan or Zoning Code. The request continues to be consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Medium Density Urban and 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). **Additionally, the request continues to be consistent with the zoning for the property,** which is Single-Family Residential (RS-7.5). The Single-Family Residential zoning district allows for single-family dwellings as a permitted use.

The Kona Community Development Plan (KCDP) has been adopted since the approval of the SMA permit. The project site is within the Kona Urban Area (KUA) but is not within a proposed location for a transit-oriented development (TOD). The Kona CDP's vision statement is "Kona's future shall be a more sustainable Kona characterized by a deep respect for the culture and the environment and residents that responsively and responsibly accommodate change through an active and collaborative community." In order to achieve this vision, the plan has created eight guiding principles, derived from public meetings and working groups, which are the foundation for the goals, objectives, policies, and implementation actions in the plan. The proposed development is consistent with the following three (3) guiding principles: Protect Kona's natural resources and culture, to provide housing choices and lastly, to provide infrastructure and essential facilities concurrent with growth.

The granting of the amendment request would not be contrary to the original reasons for the granting of the permit. The amendment request continues to be consistent with the original reasons for approving the Special Management Area Use Permit. It was originally determined that 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. The proposed development also continues to be 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.

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. 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 following surveys and plans have been conducted for this project:

- An Archaeological Inventory Survey conducted by Haun & Henry (2002).
- An Archaeological Burial Treatment Plan (August 2004) was prepared by Archaeological Consultants of the Pacific, Inc.
- An Archaeological Preservation Plan (revised December 2004) and Archaeological Monitoring Plan (revised December 2004) by Archaeological Consultants of the Pacific, Inc.
- An Archaeological Data Recovery Report dated October 2005 by Archaeological Consultants of the Pacific, Inc.
- A Flora and Fauna Report was prepared by Ron Terry, Ph.D. in December 2004.
- A revised Cultural Impact Assessment (revised July 2006), which included an ethnographic/cultural study) by Archaeological Consultants of the Pacific, Inc.

The valuable cultural, historical, and natural resources found in the area: The Archaeological Inventory Survey conducted by Haun & Henry (2002) documented a total of 21 sites comprised of 75 individual features. Two burial sites were identified on the site. The applicant has concurred with the Hawai'i Island Burial Council's determination to preserve in place the burials within these sites. An Archaeological Burial Treatment Plan (August 2004) was prepared by Archaeological Consultants of the Pacific, Inc. By letter dated November 10, 2004, the State Historic Preservation Division (SHPD) acknowledged the Hawai'i Island Burial Council's determination to preserve in place the burials within the project site. Both the Archaeological Preservation Plan (revised December 2004) and Archaeological Monitoring Plan (revised December 2004) by Archaeological Consultants of the Pacific, Inc. were accepted by the SHPD. According to the applicant, an Archaeological Data Recovery Report prepared by Archaeological Consultants of the Pacific, Inc. dated October 2005 has been transmitted to the SHPD. According to the site plan submitted by the applicant, an approximately 120 to 180-foot wide archaeological easement on the property is proposed to preserve the archaeological sites on the project site.

The revised CIA included information regarding the location of the remnants of the Judd Trail on the project site, as well as an ethnographic/cultural study of previous land uses and settlement patterns for the area. A condition of approval within the existing permit already requires that a metes and bounds survey of the Judd Trail be prepared by a licensed surveyor to locate the Judd Trail in the vicinity of the subject property from Ali'i Drive to a point near the southeast corner of the applicant's property prior to Final Subdivision Approval. Additionally, the applicant shall stabilize the existing remnants of the Judd Trail, which shall consist of stabilizing the stone walls and removing invasive plants subject to the approval of the State. Upon request of the State, the applicant shall quitclaim to the State any portions of the Judd Trail that are within the project site. A 10-foot wide buffer easement shall be established along the southern boundary of the property not in the preservation area as a "no build" buffer zone.

A Flora and Fauna Report was prepared by Ron Terry, Ph. D. in December 2004. A total of 32 plant species were identified, of which only two, the ilima and uhaloa, are indigenous to the Hawaiian Islands. No native birds were identified during the survey. The study concluded that no threatened or endangered plant or animal species are present or would be expected to be present on the project site.

The applicant will be required to notify the DLNR-SHPD should any undiscovered remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered on the site. Subsequent work shall be allowed to proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

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: The property is located mauka of Ali'i Drive. There are no identified recreational resources or public access to the shoreline, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. 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.

Lastly, the applicant will continue to be required to comply with all conditions of approval for Special Management Area (SMA) Use Permit No. 05-007. This approval is made with the understanding that the applicant remain 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 request for a five (5)-year time extension to comply with Condition No. 2 (time to secure Final Subdivision Approval) of Special Management Area Use Permit No. 05-007 is approved.