



County of Hawai'i

PLANNING COMMISSION

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April 19, 2006

Bruce C. McClure, Chief Engineer
County of Hawaii
Department of Public Works
101 Pauahi Street, Suite 7
Hilo, HI 96720

Dear Mr. McClure:

Special Management Area Use Permit Application (SMA 06-000008)
Applicant: County of Hawaii, Department of Public Works
Request: To Allow Portion of the Realigned Kapoho-Kalapana Road to be
Constructed Within the SMA
Tax Map Key: 1-3-8:portion 16

The Planning Commission at its duly held public hearing on April 7, 2006, voted to approve the above-referenced application to allow an approximate 280-foot section of the proposed Kapoho-Kalapana Road (Hwy 137) realignment to be constructed within the SMA. The affected area is located northeast of the Hwy 137-Pohoiki Road intersection in the vicinity of Isaac Hale Park, Keahialaka, Puna, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a SMA Use Permit for the realignment of an approximately 280-foot section of the proposed Kapoho-Kalapana Road (Highway 137) encompassing approximately .53 acres. The entire length of the proposed roadway is approximately .55-miles long and includes two other parcels. However, only the subject property is located in the SMA. Thus, the focus of this request is only the portion of the roadway proposed to be situated on the subject property.

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,

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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 largely undeveloped. Surrounding properties are zoned A-1a, A-10a, and Open towards the ocean. Isaac Hale Beach Park is located across Highway 137 to the southeast. The County is proposing to expand the park. Park planning has accounted for the possibility of a road in the proposed realignment corridor. Land use along the project corridor is predominantly recreational or vacant.

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 Highway 137 and will not restrict access to coastal recreational resources along the shoreline nor will it restrict visual viewplanes. According to the applicant, except for the mango grove on Pohoiki Road, the project will not affect scenic resources. Some vegetation removal will occur, but this could be mitigated by landscaping with native trees and shrubs.

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. Construction will cause temporary impacts to air quality and noise, which 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 is no identified

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public access to the shoreline or mountain areas in the area. The property is located on the mauka side of Highway 137 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.

Water is not necessary for the project. During construction, 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.

An Archaeological Assessment Survey for the Pohoiki Road Realignment Project dated April 2005 was conducted by Rechtman Consulting, LLC. The study notes that the subject property was part of an earlier inventory survey conducted by Devereax et al., 1998, and there were no sites found within the current study area during that study. The project area has been totally mechanically grubbed in the past. According to the applicant, the cultural resources of the general area were assessed primarily through consultation of an extensive 1998 document prepared by Kepa Maly as part of the EIS for the Oneloa Onsen project (see page 31 of the Final Environmental Assessment). Although gathering occurs in the general area, most of the specific route occurs in heavily degraded forest with few native plants.

There is a single, protected mango tree situated directly on the centerline of the proposed intersection on the Kapoho side of the road that impacts the alignment of the proposed roadway. This tree is situated within a grove of approximately 600 mango trees. The mango grove, located adjacent to Pohoiki Road at TMK 1-3-8, was added to the list of "Exceptional Trees of the County of Hawaii" pursuant to Ordinance No. 93 8, effective March 2, 1993. Several options were explored to preserve this single tree. While the impact of the removal of a single tree amongst 600 existing trees may be considered minor, such action would require consideration by the County Arborist Advisory Committee and require a County ordinance. At its October 20, 2005 meeting, the County Arborist Advisory Committee recommended that the County Council approve the Department of Public Works' proposal to remove the mango tree, with the caveat that this recommendation shall not set any precedent for the removal of any other tree in the

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grove. Ordinance No. 06 26 amending Ordinance No. 93 8 was approved by the County Council on February 24, 2006. Ordinance No. 06 26 states, "...The mango tree that is presently located on the centerline of the proposed intersection at Pahoa-Pohoiki Road and Kaimu-Kapoho Road is excluded from this grove of mango trees that is being entered on the list of Exceptional Trees....." Thus, the removal of the mango tree is permitted by ordinance.

The survey of the project area was conducted in April 2005. Native species found in the area include ohia, hala and alahee. No plant species listed as threatened or endangered by the U.S. Fish and Wildlife service were found to be present in the area. Several species of native birds including the io and amakihi, forage or fly over the area. According to the applicant, no other endangered species of flora or fauna are known to exist on the proposed alignment corridor or would be affected by the project.

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. A small portion of the project area is designated Important Agricultural Land and the remaining area is designated Extensive Agriculture by the LUPAG map. Although the area is designated agricultural, the Land Study Bureau's Soil Productivity Rating is "D" or "Poor." The Extensive Agriculture designation are lands not classified as Important Agricultural Land and includes lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. Thus, the proposed development would be consistent with the LUPAG Map designation.

This proposed development would complement, among others, the goals, policies and standards of the Transportation element of the General Plan, which states, "provide a system of roadways for the safe, efficient and comfortable movement of people and goods."

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 Assessment Survey for the Pohoiki Road Realignment Project* dated April 2005 was conducted by Rechtman Consulting, LLC. By Ordinance No. 06 26, a single mango tree will be preserved. The

grove of mango trees has been included in the list of "Exceptional Trees of the County of Hawaii."

The valuable cultural, historical, and natural resources found in the area: A survey of the project area was conducted in April 2005. No endangered species of flora or fauna are known to exist on the proposed alignment corridor. A single mango tree will be removed, as allowed by Ordinance 06 26. The project area has been mechanically grubbed in the past, and archaeological studies have concluded that there are no sites found 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. The archaeological survey by Rechtman Consulting, LLC notes that the subject property was part of an earlier inventory survey conducted by Devereaux et al., 1998, and there were no sites found within the current study area during that study.

Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. The removal of the single mango tree will be permitted by Ordinance 06 26. The ordinance specifically states that the approval of the ordinance "shall not set any precedent for the removal of any other tree in the grove."

Feasible actions to protect native Hawaiian rights: The property is located mauka of Highway 137 and will not be impacted by coastal hazard and beach erosion. There are no identified public accesses to the shoreline or mountains 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 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. The applicant shall comply with Ordinance No. 06 26 for the removal of the single mango tree in the affected project area. No other mango trees shall be allowed to be removed.
3. Construction of the roadway shall be completed within five (5) years from the effective date of this permit.
4. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
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 of the State of Hawaii.
6. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
7. 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.
8. The applicant shall comply with Chapter 27 (Flood Control), Hawaii County Code, in the construction of the project.
9. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
10. 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.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

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- 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

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Department of Land and Natural Resources/HPD-Kona
Rodney Haraga, Director/DOT-Highways, Honolulu
Ms. Alice Kawaha
Zoning Inspector