

## 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

MAY 01 2012

Mr. Sidney Fuke  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

Revocation of Special Management Area Use Permit (SMA 07-000016)  
Applicant: One Puako Bay Associates, LLC  
Tax Map Key: 6-9-002:001, 002

The Leeward Planning Commission, at its duly held public hearing on April 19, 2012, voted to revoke SMA No. 07-000016, which allowed the development of an 8-lot single family residential subdivision and related improvements, including a drainage channel. The property is located on the makai side of Puakō Beach Drive, adjacent to and west of the Puakō boat ramp, Lālāmilo, South Kohala, Hawai'i.

The applicant had requested the revocation of SMA No. 07-000016 since the original 8-lot single family residential subdivision concept was no longer being pursued in lieu of a smaller 3-lot subdivision that was recently declared except from the definition of "development," effectively rendering the subject SMA permit moot.

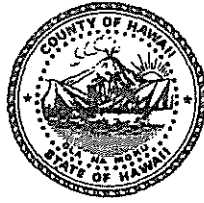
If you have questions regarding the above, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,

Geraldine Giffin, Chairman  
Leeward Planning Commission

Lonepuakorevocationsma07-016

cc: Planning Department – Kona  
Department of Public Works  
Department of Water Supply  
Real Property Tax Division  
Department of Land and Natural Resources-HPD  
Long Range Division  
Mr. Gilbert Bailado ✓



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### PLANNING COMMISSION

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September 21, 2007

Ms. Gwen Ohashi Hiraga  
Munekiyo & Hiraga, Inc.  
305 High Street, Suite 104  
Wailuku, HI 96793

Dear Ms. Hiraga:

Special Management Area Use Permit Application (SMA 07-000016)  
Request: 8-Lot Single Family Residence Lots and Related Improvements  
Applicant: Puako Bay Investors, LLC  
Tax Map Key: 6-9-2:1 and 2

The Planning Commission at its duly held public hearing on August 31, 2007, voted to approve the above-referenced request for a Special Management Area (SMA) Use Permit to allow the development of an 8-lot single-family residential subdivision and related improvements. The property is located on the makai side of Puako Beach Drive, adjacent to and east of the Puako boat ramp, Lalamilo, South Kohala, Hawaii.

Approval of this request is based on the following:

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

The proposed development, with the proposed conditions, will not have any significant adverse environmental or ecological effect. The applicant proposes to develop a gated 8-lot single-family residential subdivision and related improvements. The lots will range in size from approximately 23,000 to 30,463 square feet. Water and drainage system improvements, underground utility connections, and landscaping improvements are proposed. The applicant plans to landscape and provide a grassed lateral shoreline

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access within the shoreline setback area. (Landscaping and the provision of a lateral shoreline access are considered exempt under the Planning Department's Rule No. 11, Shoreline Setback) The cost of the development is approximately \$7,500,000.00.

The proposed action will not create significant adverse impacts upon nearby and immediately adjacent properties. The project site is located makai of Puako Beach Drive, west of the Puako boat ramp. Parcel 1 is approximately 3.71 acres in size, and parcel 2 is approximately 3 acres in size, for a combined project area of 6.71 acres. The site is overgrown with Kiawe trees and buffel grass. The 40-foot certified shoreline traverses proposed lots 1 through 4 on parcel 2. Properties to the east are zoned Open and owned by the State. To the west are lands zoned V-1.25. Adjacent properties to the west are vacant. The closest home to the west is about 400' from the property line. Lands to the south across Puako Beach Drive, mauka of the site, are vacant and zoned A-5a. These are owned by the state and are in the state land use Conservation district. The Hokuloa United Church of Christ is located approximately .3 miles west of the site, and the Puako Beach Condominium complex and the Puako General Store is located approximately 1/2 mile west of the project site.

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. With the proposed conditions, the development will not substantially affect scenic vistas or viewplanes of nearby residents nor have a significant adverse impact on coastal recreational or visual resources to the shoreline and coastal ecosystems. The proposed conditions of approval will require that the applicant develop a walking trail across state land from the Puako boat ramp area, including a grassed pathway on their property, to provide public pedestrian access along the shore from the boat ramp to the western edge of their property.

The property does not currently have a view corridor from Puako Beach Drive to the sea because of vegetation. The applicant proposes to mitigate visual impacts by limiting the building height to two stories. A condition of approval will be included to limit the height of any structure to 35 feet. The project will also include an 80-foot wide drainage channel on the western portion of the proposed subdivision on parcel 2. This drainage channel will be cleared and maintained with low landscaping to provide drainage facilities for the project site. The applicant states that "this will also provide a new view corridor for mauka to makai views from Puako Road."

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. County water is available to the project site from an existing 12-inch waterline within Puako Beach Drive fronting the properties. According to the Department of Water Supply (DWS), the current water availability allow for only one unit of water per existing lot of record. The applicant has stated that the 15,000 gallons per day necessary to support the 8-lot subdivision will be provided from Bridge Ainalea, LLC's allocation of water from wells to be developed pursuant to a Water Agreement between Bridge Ainalea, LLC and the Water Board. However, the Water Agreement states that Bridge Ainalea, LLC may only assign water to properties owned by them, their successors and assigns and their related and affiliated entities. Therefore, unless the above conditions are satisfied and the Water Board approves the allocation of water, the DWS cannot provide a water commitment for the proposed project. The DWS further states that should the allocation be approved by the Water Board, water cannot be made available to the project until Bridge Ainalea, LLC has completed construction of the necessary water system improvements for their development and the improvements have been dedicated to and accepted by the Water Board.

The applicant is seeking other alternatives to provide water for the proposed development. A condition is being recommended that will require the applicant to obtain the necessary water commitment from the Department of Water Supply within one year from the date of approval of this Special Management Use Permit.

Lot owners will utilize individual wastewater systems (IWS) approved by the Department of Health. The conditions of approval will require that each IWS include an aerobic treatment unit. Effluent disposal will be to a leach field located on each lot. 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.

A study titled *Archaeological Assessment Survey for Due Diligence, Puako Coastal Parcels, Land of Lalamilo, South Kohala District, Island of Hawaii (March 2006)* was prepared by Paul H. Rosendahl, Ph.D., Inc. (Appendix E of application). The study revealed that "most of the project area has been bulldozed in the past. The area contains many bulldozer tracks, bulldozed piles of earth mixed with organic material like coconut and kiawe stumps. No archaeological sites were identified during the survey; the only remains identified were widely scattered and highly fragmented remains of former structures - mostly in the form of shards of glass and highly fragmented metal, wood and plastic." The study recommended that the State Historic Preservation Division (DLNR-HPD) provide a formal determination of "no historic properties affected" for the entire project area. By letter dated March 6, 2007, the applicant has requested a letter of "no effect" from the DLNR-HPD. Although the DLNR-HPD has not provided any comments as of this writing, a condition will be included to require the applicant to cease any activity and notify the DLNR-HPD should any undiscovered remains of historic sites be discovered.

A study titled *A Survey of botanical, Avian, and Mammalian Resources Conducted on TMK (3) 6-9-002: 01 & 02: Puako Bay, South Kohala District, Island of Hawaii (July 21, 2006)*, was prepared by Rana Productions, Ltd, and AECOS Consultants. The study concluded that "it is not expected that the modification of the habitat currently found on the site will have a negative impact on any avian or mammalian species currently listed as endangered, threatened or currently proposed for listing under either the federal or state endangered species statutes. The results of the botanical survey indicate that there are no special concerns or legal constraints related to botanical resources in the project area. No plant species listed as endangered, threatened, or currently proposed for listing under either the federal or state endangered species statutes are identified on the project site." (Appendix B in the application)

Department of Public Works (DPW) states that Flood Zones AE, AO and X affect parcel 2 as designated by the Flood Insurance Rate map (FIRM) dated September 18, 1988. Any new construction or substantial improvements within parcel 2 will be subject to the requirements of Chapter 27 - Flood Control, of the Hawaii County Code. The DPW further states that filling which could raise the base flood elevation or aggravate flooding on adjacent parcels will not be permitted. For the proposed filling and channelization of the AO zone, the DPW recommends that the applicant submit a flood study prepared by a licensed professional civil engineer to the Federal Emergency Management Agency (FEMA) for a Conditional Letter of Map Revision (CLOMR). The applicant has submitted a Flood Study Report dated August, 2007, and a further report dated August 24, 2007. The report shows that the drainage channel should not result in greater erosion if the drainage channel is landscaped. A condition will be included to

require the applicant to comply with Chapter 27, Flood Control, and all regulations of the Federal Emergency Management Agency, and to landscape and maintain the drainage channel.

Other than the use of the shoreline and ocean waters for fishing and gathering, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site or nearby area, nor existence of any known valued cultural, historical or native resources.

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 subject area is designated Low Density Urban. The property is zoned Resort -1,250 square feet (V-1.25). Single family dwellings are permitted in the Resort-zoned district. Thus, the proposed development is consistent with the LUPAG Map designation and the Zoning Code.

Access to the project site is proposed from Puako Beach Drive, a County-owned and maintained roadway with an approximately 18 to 20-foot pavement with inconsistent improved and unimproved paved/gravel/grass shoulder, all within a right-of-way of approximately 40 feet. As an alternative, the applicant may pursue a land and easement acquisition with the Department of Land and Natural Resources for a parcel of land (TMK: 6-9-1: 15) located between the two subject parcels for access purposes

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. 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: A study titled *Archaeological Assessment Survey for Due Diligence, Puako Coastal Parcels, Land of Lalamilo, South Kohala District, Island of Hawaii (March 2006)* was prepared by Paul H. Rosendahl, Ph.D., Inc. (Appendix E of application). No archaeological sites were identified during the survey; the only remains identified were widely scattered and highly fragmented remains of former structures. The study recommended that the State Historic Preservation Division provide a formal determination of "no historic properties affected" for the entire project area. As of this writing, the DLNR-HPD has not responded to this department's request for comments.

A study titled *A Survey of botanical, Avian, and Mammalian Resources Conducted on TMK (3) 6-9-002: 01 & 02: Puako Bay, South Kohala District, Island of Hawaii (July 21, 2006)* was prepared by Rana Productions, Ltd, and AECOS Consultants.

The study concluded that the project will not impact any avian or mammalian species currently listed as endangered, threatened or currently proposed for listing under either the federal or state endangered species statutes. The results of the botanical survey indicate that there are no special concerns or legal constraints related to botanical resources in the project area. No plant species listed as endangered, threatened, or currently proposed for listing under either the federal or state endangered species statutes are identified on the project site.

The applicant prepared two studies dealing with the potential impact of the project on ocean water quality: *Assessment of the Impact on Marine Water Chemistry Proposed Puako Residential Project*, by Marine Research Consultants, and *Assessment of the Impact of Groundwater of the Proposed Puako Residential Project*, by Tom Nance Water Resource Engineering. The applicant's studies concluded that the project should have minimal impact on water quality from wastewater disposal or fertilization for landscaping.

The valuable cultural, historical, and natural resources found in the area: The shoreline and ocean area fronting the project site are used for fishing and gathering, and constitute a valuable natural resource. Both the botanical and archaeological study revealed no endangered species or historical sites on the project site. However, a condition will be included to require the applicant to cease work and notify the DLNR-HPD should any remains be discovered on the site, until given clearance to proceed by the DLNR-HPD.

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. According to the botanical and archaeological studies submitted by the applicant, the project will not adversely impact resources in the area. The applicant's studies concluded that the project should have minimal impact on water quality from wastewater disposal or fertilization for landscaping. This is credible given the small scale of the project - 8 lots. As discussed in more detail in the sections concerning the drainage channel, it should not result in significant sedimentation problems.

Feasible actions to protect native Hawaiian rights: The applicant states that no gathering is taking place on the project site. However, there is gathering and fishing along the shoreline. Shoreline gathering rights are protected by the public access requirement. Conditions of approval will require an aerobic treatment unit. This will provide additional protection against nutrient enrichment of the ocean waters. The flood channel will have to be landscaped to reduce the erosion potential.

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. The required water commitment shall be secured from the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within one year from the effective date of this permit.
3. Final Subdivision approval shall be secured within five (5) years from the effective date of this permit.
4. All structures shall be limited to a maximum height of thirty-five (35) feet, measured according to Chapter 25, Hawaii County Code.
5. Restrictive covenants in the deeds of all the proposed lots within the subject property shall give notice that the terms of the permit restrict the use of the lots for only single-family dwelling purposes and prohibit timeshares and rentals for periods of less than one month. A copy of the proposed covenant(s) to be recorded with the State of Hawaii Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
6. The applicant shall provide a lateral shoreline public access walking trail from the Puako Boat Ramp area to the western boundary of the subject property. The walking trail can be located on state property when there is state property between the applicant's property and the certified shoreline; otherwise, the trail shall be located within the 40-foot setback from the certified shoreline on the applicant's property. The applicant shall secure all necessary approvals from the state to perform the necessary work. The applicant shall clear vegetation and establish a safe walking path following the general guidelines of the state Na Ala Hele trails program. The applicant and its successors shall maintain the path in the future. Subdivision plans shall note the existence of the public access trail where it crosses the applicant's property. The trail construction plans shall meet with the approval of the Planning Director. The applicant shall submit a public access plan



for the approval of the Planning Director to determine allowable hours and restrictions on usage for the portion of the trail within the applicant's property.

7. The applicant shall work with the State Division of Boating and Ocean Recreation in improving the parking area and other related improvements to enhance access to the shoreline. The improvements at the Puako Boat Ramp will negate the need for a mauka-makai public access through the project site.
8. Access to Puako Beach Drive shall meet with the approval of the Department of Public Works and conform to Chapter 22 (Streets) of the Hawaii County Code.
9. Any common vehicular security gate shall be a minimum of 40 feet (exclusive of gate swing) from the right-of-way line with the turnaround on the Puako Beach Drive side of the common gate.
10. All fill areas on the lots shall be made to drain away from the ocean. Retaining walls shall be constructed along the lots facing the shoreline.
11. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
12. 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.
13. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
14. Individual wastewater systems shall be installed, meeting with the approval of the Department of Health. Each individual wastewater system shall include an aerobic treatment unit. Each owner shall be required to enter into a maintenance contract with a qualified operator for the maintenance and repair of the individual wastewater system. These requirements shall be covenants to the deeds to the properties.
15. Comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
16. Prior to any filling of the AO or AE zones, the applicant shall apply to the Federal Emergency Management Agency (FEMA) for a Conditional Letter of Map

Revision (CLOMR). Approval of the CLOMR shall be secured before any filling within the "AO" or "AE" flood zones. A LOMR shall be secured prior to the issuance of final construction approval. A revised final plat shall be submitted with approved changes to the FIRM boundaries. The drainage channel shall be planted and maintained to resist erosion from flood waters. The applicant shall comply in all relevant respects with Chapter 27, Hawaii County Code. The applicant shall form a homeowner's association or other entity which shall maintain the drainage channel, keeping it free of unwanted vegetation and debris, and maintaining the desired vegetation to reduce the erosion potential.

17. 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.
18. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
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.
  - 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.

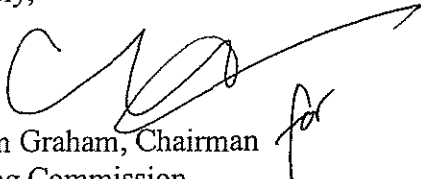
Ms. Gwen Ohashi Hiraga  
Page 10

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,

A handwritten signature in black ink, appearing to be 'William Graham', with a long horizontal stroke extending to the right.

William Graham, Chairman  
Planning Commission

Lpuakobay01PC

cc: Mr. Howard Kihune/Puako Bay Investors, LLC  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
Department of Land and Natural Resources/HPD-Kona  
DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Zoning Inspector  
Subdivision Section  
Mr. Sidney Fuke