

County of Hawai'i

PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

July 23, 2007

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

Dear Mr. Mooers:

Special Management Area Use Permit Application (SMA 07-000018)
Request: Construct 12-Unit Town House Project and Related Improvements
Applicant: Pacific Island Investments, LLC
Tax Map Key: 2-1-14:4 & 5

The Planning Commission at its duly held public hearing on July 6, 2007, voted to approve the above-referenced request to allow the development of a 12-unit condominium complex and related improvements on approximately 1.44 acres of land. The property is located between Kalaniana'ole Street and Apapane Street in the vicinity of Puhi Bay, Keaukaha, South Hilo, Hawaii.

Approval of this request is based on the following:

The applicant is proposing to develop twelve (12) condominium units and related improvements on 1.44 acres of land within the Special Management Area. The project will consist of two (2) triplexes fronting Apapane Street (single-story units over parking), two (2) duplexes and two (2) units fronting Kalaniana'ole Street (two-story units over parking) along with the required off-street parking and landscaping. The proposed development will be constructed near and within several tidal ponds and areas of wetlands located on the project site.

The project will be constructed in approximately 12 months. The development will cost approximately \$3.5 million dollars.

The proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. In considering the significance of potential environmental effects, the Director shall consider the sum of

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those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options.

A "substantial adverse effect" is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. In reviewing the proposed development against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1 through 10), it has been determined that the proposed development of twelve (12) condominium units and related improvements in this area will not have a significant adverse environmental or ecological effect to the Special Management Area. It should be noted that under Planning Commission Rule 9-10 (H) (9), a proposed use, activity or operation may constitute a substantial adverse if it affects an environmentally sensitive areas, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water. Although this use is located within a Special Flood Hazard Area and the Tsunami Evacuation Zone, the proposed development must meet the standards that require the first floors to be elevated above the base flood elevation (13 to 15 feet) and flood proofing for any structures or uses below this elevation. As such, the proposed development will not create a substantial adverse effect on these environmentally sensitive areas.

The proposed development will not create significant adverse impacts upon nearby and adjacent properties as the immediate area have been developed with single-family dwellings, a lodge and a condominium. Surrounding properties are zoned Resort-Hotel (V-.75), Single-Family Residential (RS-10) and Open. The property borders Kalaniana'ole Street on the south (mauka) side and Apapane Street on the north (makai) side. Further south, across Kalaniana'ole Street are single-family dwellings. To the west is Arnott's Lodge and a private residence. To the east is the Alii Kai apartment building, which is separated from the project site by a 40-foot undeveloped "paper" road referred to as Hapai Avenue.

Although the proposed project will add to the cumulative traffic impact on Kalaniana'ole Street and Apapane Street, the amount of additional vehicles will be minimal and will be much less than the resort-hotel zoning for the property allows.

The property is located within an area adequately served with essential services and facilities such as water, sewer, transportation systems and other utilities. Access to the project site will be from Kalaniana'ole Street and Apapane Street. County water is

available to the site. As a condition of approval, the applicant will be required to hook up to the County's wastewater treatment facility at Keaukaha via a sewer line fronting the property along Kalaniana'ole Street.

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.

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. In reviewing the proposed development, it has been determined that it is consistent with the objectives and policies listed under Chapter 205A, HRS, which includes protecting and preserving recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, beach protection, and marine 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 project will not restrict access to coastal recreational resources along the shoreline.

The proposed development will not substantially affect environmentally sensitive areas, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water as the project design must meet standards that require the first floors to be elevated above the base flood elevation and flood proofing for any structures or uses below this elevation. Based on additional information and a recommendation provided by Dr. George D. Curtis, who has done extensive studies of tsunami inundation in Hilo Bay, the Planning Director is adding a condition of approval that the lowest habitable floor shall be elevated to 18 feet above mean sea level, rather

than the 14 or 15 feet as allowed by the Flood Insurance Rate Map (FIRM). Although Dr. Curtis' letter (refer to Planning Department Exhibit 2 in Background) states that he estimates the maximum water flooding level in the subject area would be 18 to 20 above the general ground level, Dr. Curtis clarified in a phone conversation with the Planning Director that the actual recommendation was 18 feet above mean sea level.

The proposed development will be constructed near or within several tidal ponds and areas of wetlands located on the project site. As such, the applicant will be required to submit and receive permits, if required, from the U.S. Army Corps of Engineers for this project. Additionally, the applicant will be required to submit and implement a pond restoration plan for the restoration of the pond complex located on the project site, which will be reviewed and approved by the Planning Director prior to the commencement of any construction or land alteration activities on the property.

The site is currently vacant of uses and structures. There were no listed, candidate or proposed threatened or endangered plant species that found or would be expected in the area, and no rare plant species or ecosystems are present or nearby. An Archaeological Inventory Survey and Limited Cultural Assessment was conducted of the project site by Robert B. Rechtman, Ph.D of Rechtman Consulting, LLC. Site RC-0452-1 consists of four twentieth century features, three (3) house foundations and a small-scale commercial fishpond. The report concludes that no further work is recommended for Site RC-0452-1. The survey was submitted to the Department of Land and Natural Resources-State Historic Preservation Division for review and approval.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. There 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 property does not front the shoreline 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.

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 Resort Area by the LUPAG map. The Resort Area designation includes a mix of uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), and support services. Intermediate Resort, Minor Resort, and Retreat Resort Areas are identified as Resort Areas on the LUPAG Map. Thus, the proposed development would be consistent with the LUPAG Map designation. The

proposed development would complement, among others, the goals, policies and standards of the Land Use and Economic Elements of the General Plan.

The property is presently zoned Resort-Hotel - 750-square feet (V-.75). Hotels, lodges, time-share units, and single-family, double-family and multiple-family dwellings are listed as permitted uses within the Resort-Hotel zoning in the Zoning Code. Therefore, the proposed development is consistent with the General Plan and the Zoning Code.

The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist. 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 rights, such as 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 reports were conducted and submitted with the application:

- An Archaeological Inventory Survey and Limited Cultural Assessment was conducted of the project site by Robert B. Rechtman, Ph.D of Rechtman Consulting, LLC.
- A botanical survey of the site was conducted by Ron Terry, Ph.D. and Layne Yoshida, B.A.
- A biological field study of the ponds on the project site was conducted by R.A. Englund, Ph.D.

The valuable cultural, historical, and natural resources found in the area: The property is vacant of structures and uses. The Archaeological Inventory Survey identified Site RC-0452-1, which consists of four twentieth century features, three (3) house foundations and a small-scale commercial fishpond. The survey concluded that no further work is recommended for Site RC-0452-1. The survey was submitted to the Department of Land and Natural Resources-State Historic Preservation Division for review and approval. Additionally, there were no listed, candidate or proposed threatened or endangered plant species that found or would be expected in the area, and no rare plant species or ecosystems are present or nearby. Lastly, there are several tidal ponds and areas of wetlands located on the project site. A biological field study of the ponds was conducted, which included recommendations for pond restoration. A condition of approval will be added to require the applicant to submit and implement a pond management restoration plan for the restoration of the pond complex on the project site.

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

Feasible actions to protect native Hawaiian rights: To the extent that 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 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. Parcels 4 and 5 shall be consolidated within one (1) year from the effective date of this permit.
3. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within six months from the effective date of this permit. The applicant shall install a backflow preventer (reduced pressure type) by a licensed contractor within five feet of the meter on the applicant's property, meeting with the approval of the Department of Water Supply.
4. Plans shall identify the lowest habitable floor elevated to 18 feet above mean sea level for all habitable structures.
5. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify, if applicable, all proposed structures, fire protection measures, paved driveway

access and parking stalls, and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).

6. The project shall connect to the County's wastewater treatment facility at Keaukaha via the sewer line fronting the property along Kalaniana'ole Street prior to the issuance of a Certificate of Occupancy.
7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
8. The applicant shall comply with Chapter 27 - Flood Control, of the Hawaii County Code.
9. 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.
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. All driveway connections to Kalaniana'ole Street and Apapane Street shall conform to Chapter 22, County Streets, of the Hawaii County Code.
13. 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.
14. The applicant shall submit and receive permits, if required, from the U.S. Army Corps of Engineers for this project. The Planning Director shall be notified in writing as to whether such permit is required for the development of the project.

15. 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.
16. The applicant shall submit and implement a pond restoration plan for the restoration of the pond complex located on the project site. The plan shall be reviewed and approved by the Planning Director prior to the commencement of any construction or land alteration activities on the property. The structures and parking areas shall not encroach on the pond to a greater extent than shown in the proposed site plan.
17. All mitigation measures required by the State Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) shall be implemented prior to the commencement of any construction or land alteration activities on the property. The Planning Director shall be notified in writing of the mitigation measures required by DLNR-SHPD for the proposed development.
18. 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.
19. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
20. 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.
21. 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.

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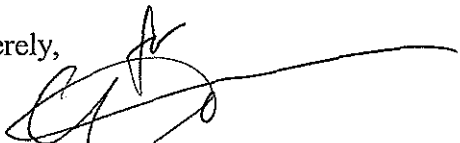
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted 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 foregoing 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 Jeff Darrow of the Planning Department at 961-8288, x259.

Sincerely,



William Graham, Chairman
Planning Commission

Lpacificislandinvestmentsma01PC

cc: Mr. Gil Barden
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
Plan Approval Section