

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

December 26, 2007

Mr. Matthew Kilgore
65-1285C Kawaihae Road
Kamuela, HI 96743

Dear Mr. Kilgore:

Special Management Area Use Permit (SMA 07-000020)
Request: 11-Unit Condominium Complex
Applicant: Matthew Kilgore
Tax Map Key: 7-6-14:13

The Planning Commission at its duly held public hearing on December 12, 2007, voted to approve the above-referenced request application for a Special Management Area (SMA) Use Permit application to allow the construction of a 5-story, 11-unit condominium project on 14,450 square feet of land. The property is located along the makai side of Alii Drive, adjacent to and south of the Kona Banyan Tree Condominium, Holualoa 1st and 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Management Area Use Permit to develop eleven (11) condominium units and related improvements on 14,450 square feet of land within the Special Management Area. The project will consist of eleven (11) 2-bedroom/2-bathroom condominium units within a 45-foot high, five-story structure along with the required off-street parking and landscaping. The project will be constructed in approximately 18 months. The development will cost approximately \$8 million dollars.

There have been several previous Special Management Area Use Permits approved for similar requests on the subject property. These include Special Management Area Use Permit No. 173, which was approved on January 14, 1982 by the Planning Commission for the development of an 8-unit condominium and related improvements. SMA 173 was revoked with the approval of Special Management Area Use Permit No. 318, which was approved on August 15, 1991 by the Planning

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Commission to allow the construction of a 12-unit condominium building and related improvements. Later, the Planning Commission revoked SMA 318 because the applicant had filed for bankruptcy and was unable to pursue the project.

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 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 eleven (11) 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 (12 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 has been developed with similar uses (condominiums, apartments and single-family dwellings). Surrounding properties are zoned Resort-Hotel (V- 1.25) and Multiple-Family Residential (RM -1.5). The property borders Alii Drive on the mauka (east) side and the coastline on the makai (west) side. Adjacent to the property on the north side is the Kona Banyan Tree Condominiums. There are apartments and dwellings on the properties adjacent to the south and across Alii Drive to the east.

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 Alii Drive. County water is available to the site. As a condition of approval, the applicant will be required to hook up to the County's sewer line fronting the property along Alii Drive.

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 development is consistent with the County General Plan and Zoning Code and other applicable ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Open along the shoreline and Medium Density Urban, which 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).

The proposed development will complement the goals, policies and standards of the Land Use and Housing (Multiple Residential) Elements of the General Plan. The proposed condominium project will add to the housing inventory for the district of North Kona. Thus, the provision of this type of housing development in this district will implement the General Plan's Housing Element. The condominium project will be in harmony with the character of the surrounding neighborhood and will 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 subject property is zoned Resort-Hotel – 1,250 square feet (V-1.25) by the County. 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. The applicant is proposing to construct eleven (11) condominium units on the property. Therefore, the proposed development is consistent with the County General Plan and with County zoning.

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.

There are identified recreational resources along the Kona Coast. These include surfing, snorkeling, scuba diving, spearfishing, fishing, boating, and other similar types of activities. There are several identified public access areas to the shoreline near the subject property. A condition of approval will require the applicant to submit a lateral shoreline access plan to allow for perpetual public access along the shoreline area of the property.

The proposed development will not substantially affect scenic vistas or viewplanes from the State Highway 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 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 Assessment report was conducted of the project site by Robert B. Rechtman, Ph.D of Rechtman Consulting, LLC on September 28, 2003. The report concluded that there were no archaeological features observed anywhere on the parcel. The assessment was submitted to the Department of Land and Natural Resources-State Historic Preservation Division for review and approval. The Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) issued a "no-effect" letter dated November 14, 2003 stating that they agree that no historic properties will be affected by the proposed development.

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 on the property.

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 survey was conducted and submitted with the application:

- An Archaeological Assessment report was conducted of the project site by Robert B. Rechtman, Ph.D of Rechtman Consulting, LLC on September 28, 2003.

The valuable cultural, historical, and natural resources found in the area: The property is vacant of structures and uses. The Archaeological Assessment concluded that there were no archaeological features observed anywhere on the parcel. The assessment was submitted to the Department of Land and Natural Resources-State Historic Preservation Division for review and approval. The Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) issued a "no-effect" letter dated November 14, 2003 stating that they agree that no historic properties will be affected by the proposed development.

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. The required water commitment payment for the additional 3 units shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within one hundred and eighty days from the effective date of this permit. The applicant shall submit the results of a fire hydrant flow test, conducted by a professional engineer licensed in the State of Hawaii at the nearest fire hydrant to the property, showing that 2,000 GPM will be available. 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.
3. 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).
4. The applicant shall submit a lateral shoreline access plan meeting with the approval of the Planning Director prior to receipt of Final Plan Approval. The lateral access plan shall provide for perpetual public access along the shoreline.
5. The minimum 20-foot shoreline setback area shall be clearly staked and delineated on ground. A letter confirming the staking shall be submitted prior to or in conjunction with a building permit application. No construction or construction-related activities shall occur within the minimum 20-foot shoreline setback area.
6. The project shall connect to the County's sewer line fronting the property along Alii Drive 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 Alii Drive shall conform to Chapter 22, County Streets, of the Hawaii County Code.
13. An All Hazards 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. 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.
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 applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
17. 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.

Mr. Matthew Kilgore

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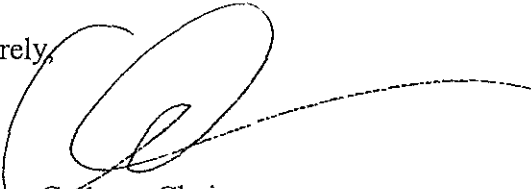
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted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

Sincerely,



William Graham, 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
DOT-Highways, Honolulu
Ms. Alice Kawaha
Zoning Inspector
Plan Approval Section