

## 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 24, 2008

Mr. John Hetherington  
Hawaii Design Group  
75-5660 Kopiko Street, #4A  
Kailua Kona, HI 96740

Dear Mr. Hetherington:

Special Management Area Use Permit Application (SMA 08-000030)  
Request: 12-Unit Mixed Use Condominium Project  
Revocation of SMA No. 448 (04-007)  
Applicant: Walua Sunsets, LLC  
Tax Map Key: 7-5-18:92

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The Planning Commission at its duly held public hearing on December 11, 2008, voted to approve the above-referenced request for a Special Management Area Use Permit to allow the development of a 3-story, 12-unit mixed use office-residential condominium project. The Commission also voted to revoke Special Management Area Use Permit No. 448 previously issued to William E. Hall for a 3-story, 12-unit apartment complex and related improvements. The property is located between Walua Road and Kuakini Highway, approximately 930 feet northwest of the Walua Road – Lunapule Road junction, Waiaha, North Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Management Area Use Permit to allow the construction of a three-story, twelve-unit mixed use office-residential condominium project, which is approximately 24,000 square feet in size, and related improvements. The development will include a three-story building with twelve (12) office or residential units. The first floor will be for parking, which will include forty parking spaces. The second and third floors will have six (6) units each for a total of twelve (12) units. The design of the project will include walkways, lanais, an elevator and various landscaping. The driveway ingress and egress will be onto Walua Road.

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The applicant is also requesting the revocation of Special Management Area Use Permit No. 448, which was approved on September 3, 2004 to William E. Hall to allow the construction of a 3-story, 12-unit apartment building and related improvements on the same property. Although the projects are similar, they differ in size and use. The previous project proposed to construct a 16,000-square foot 3-story, 12-unit apartment building, whereas this project proposes to construct a 24,000-square foot 3-story, 12-unit mixed use office-residential condominium project.

The proposed request 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 3-story building and related improvements in this area will not have a significant adverse environmental or ecological effect to the Special Management Area.

The proposed development will not create significant adverse impacts upon nearby and adjacent properties as the immediate area has been developed with similar uses. The properties to the north and south are similarly zoned Village Commercial (CV-10) and have been improved with similar types of uses. The property to the west (makai) of the project site across Walua Road has been developed with a 200-unit multi-family condominium complex called Alii Cove, which is zoned Multiple-Family Residential (RM-4).

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 property is from Walua Road, which is a County roadway with a 24-foot paved road with curb, gutter and sidewalks in a 50-foot right-of-way. County water is available to the site. As a condition of approval, the applicant will be required to hook up to the

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County's sewer line. Additionally, the applicant will be required to submit a Solid Waste Management Plan to the Department of Environmental Management.

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, fishing, boating, and other similar types of activities. There is no record of a designated public access to the shoreline or mountain areas that traverses the subject property. The proposed development will not substantially affect public shoreline access to the mountains or the shoreline, or restrict access to coastal recreational resources along the shoreline. The property is located approximately 800 feet from the shoreline and will not be impacted by coastal hazard and beach erosion. The applicant is proposing to construct a 3-story building no higher than 30 feet in height, which will not substantially affect scenic vistas or viewplanes in the area.

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. The applicant will be required to submit a grading, drainage and erosion control plan and drainage report to the Department of Public Works, prior to the issuance of a building or grading permit. 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.

According to the Department of Land and Natural Resources Historic Preservation Division's July 7, 2004 letter, "this project has already gone through the historic preservation review process and mitigation has been completed. Thus, we

believe that no historic properties will be affected by this undertaking.” No historic features will be impacted by the proposed residential/office structure.

There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site. As stated above, the project has gone through the historic preservation review process and mitigation has been completed.

The proposed development is consistent with the County General Plan and Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Medium Density Urban, which allows village and neighborhood commercial and residential and related functions (3-story commercial; residential - up to 35 units per acre). The subject property is zoned Village Commercial (CV-10) by the County.

This proposed development will complement the goals, policies and standards of, among others, the Land Use, Housing and Economic Elements of the General Plan. The proposed development will add to the housing inventory for the district of North Kona and provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment. This 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.

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. This project, as well as the previous approved projects in this area, will diminish the shoreline viewplane from Kuakini Highway along the subject properties, yet the viewplane will not be affected substantially.

The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. 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: The applicant presented the following information from which the Planning Commission can determine the valued cultural, historical, and natural resources within the area sought for Special Management Area Use Permit:

- A "no effect" letter from the Department of Land and Natural Resources Historic

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Preservation Division dated July 7, 2004 that states, "this project has already gone through the historic preservation review process and mitigation has been completed. Thus, we (DLNR-SHPD) believe that no historic properties will be affected by this undertaking."

The valuable cultural, historical, and natural resources found in the Special Management Area Use permit area: Previously, an Archaeological Inventory Survey was conducted of the subject area by Paul H. Rosendahl, Ph.D., which identified 27 sites consisting of 19 identified during the survey and 8 previously recorded during the Alii Drive Sewer Project in 1994. A total of 41 features were identified, consisting of 12 modified outcrops, 9 walls, 4 mounds, 3 lava tubes, 3 alignments, 2 platforms, 2 cupboards, and one of each of the following, enclosure, terrace, lava blister, shrine, pavement, and papamu. The inventory survey report assessed all of the sites as significant for their information content. Two sites, a possible shrine (Site 22042, Feature B) and a cave containing possible burial mounds (Site 15515), were provisionally assessed as significant for their cultural value pending further investigation. These two sites, and five other sites, were recommended for data recovery. An Archaeological Data Recovery Plan conducted by Haun & Associates in September of 2001 was submitted and approved by DLNR's April 4, 2004 letter to Dr. Alan Haun, Haun & Associates, which stated "our comments have been satisfactorily addressed and the plan now meets with our approval." According to the DLNR-SHPD's July 7, 2004 letter, "this project has already gone through the historic preservation review process and mitigation has been completed."

Based on a Botanical Reconnaissance conducted by Ron Terry, Ph.D of the Walua Professional Building properties located next to the subject property in November of 2003, the report concluded that no adverse botanical impacts would result from the development of the property.

Possible adverse effect of impairment of valued resources: As the historic preservation review process has been conducted and mitigation has been completed, there will be no adverse effects to valued resources.

Feasible actions to protect native Hawaiian rights: To the extent to which 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. Conditions 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 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.
2. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the water demand calculations which should include all uses including office/residential units and landscaping, and submit a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within one hundred and eighty days from the effective date of this permit. The applicant shall install a backflow preventer (reduced pressure type), if required, by a licensed contractor 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 date of this permit. Prior to construction, the applicant shall secure Final Plan Approval from the Planning Director in accordance with Sections 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and proposed structures, landscaping, paved driveway access and parking stalls associated with the proposed development. Landscaping shall be provided as required by Planning Department Rule 17 (Landscaping Requirements).
4. A grading, drainage and erosion control plan and drainage report shall be prepared and submitted to the Department of Public Works for review and approval prior to the issuance of a building or grading permit, and the recommended drainage system shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
5. Access to Walua Road, including the provision for adequate sight distance, shall meet with the approval of the Department of Public Works. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.

6. 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.
7. 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.
8. Sewer lines shall be installed within the development and connect with the County's sewer system, meeting with the approval of the Department of Environmental Management, prior to the issuance of a Certificate of Occupancy.
9. Should any 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-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
10. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
11. An initial extension of time for the performance of conditions within the 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 granting of the 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).

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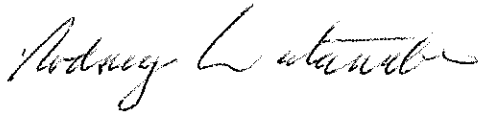
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation

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,



Rodney Watanabe, Chairman  
Planning Commission

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cc: Mr. Charles Cotton, Wailua Sunsets LLC  
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  
Mr. Gilbert Bailado