



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

April 14, 2010

Mr. Timothy Duerler
2H Hawaii, LLC
P.O. Box 212
Pāpa'aloa, HI 96780

Dear Mr. Duerler:

Special Management Area Use Permit Application (SMA 10-000038)
Request: To Allow Construction of a New Commercial Medical Office
Building in the SMA
Applicant: 2H Hawaii LLC
Tax Map Key: 2-3-009:26 and 27

The Windward Planning Commission at its duly held public hearing on April 1, 2010, voted to approve the above-referenced request to allow the construction of a medical office building. The property is located at the corner of Punahoa Street and Nawahi Street, Downtown Hilo, South Hilo, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Management Area Use Permit to construct a two-story medical office building and related improvements on 7,295 square feet of land within the Special Management Area. The new structure will be approximately 30 feet in height. The use of a medical clinic is consistent with the CDH zoning. Prior to construction, the two lots will be consolidated into one lot.

The ground floor will be used for parking with at least 15 parking stalls, 2 ADA-accessible stalls and a loading zone. There will be two (2) stairwells with an accompanying wheelchair lift. The second floor will be used as a general medical office with a patient waiting area, reception area, examination rooms and other required elements of a standard medical office.

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 2-story building 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 elevated floor be above the base flood elevation (18 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. Surrounding properties are zoned Downtown Hilo Commercial (CDH). Surrounding land uses include Agasa Furniture on the adjoining the property to the east. Shell Gas Station is on the adjoining property to the north. Across Nawahi Lane are farmer's market establishments with parking. Across Punahoa Street is additional parking.

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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 is from Punahoa Street and Nawahi Lane, which are County roadways. 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, which runs diagonally through the subject properties.

Off-site parking is not required for this area in Downtown Hilo but the applicant will be providing off-street parking for the patrons of the medical facility. There is on-street parking available along the northwest side of Nawahi Lane and along Ponahawai Street.

A major concern for this area is pedestrian safety. Pedestrian activity is greatly increased in the area on farmer's market days (Wednesdays and Saturdays). Currently, there are no sidewalks along Punahoa Street or Nawahi Lane fronting the project site. Nawahi Lane only has a sidewalk on the opposite side of the street. In the interest of pedestrian safety, the Department of Public Works is requesting that the applicant provide concrete sidewalks along the properties' frontages of Nawahi Lane and Punahoa Street. The construction of the medical office building without sidewalks will put pedestrians at risk as they will be forced to walk on the roadways fronting the project site. For public health and safety, a condition of approval will be added requiring the applicant to construct concrete sidewalks along the properties' frontage of Punahoa Street and Nawahi Lane.

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 High Density Urban, which allows for general commercial, multiple family residential and related services (multiple family residential -- up to 87 units per acre). The proposed health center will complement the following goals, policies and standards of the Economic, Public Facilities and Land

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Use elements of the General Plan:

Economic Element

- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawai'i.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Encourage the health/wellness industry.

Public Facilities: Health

- Encourage the establishment or expansion of community health centers and rural health clinics.

Land Use Element

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Promote and encourage the rehabilitation and use of urban areas that are serviced by basic community facilities and utilities
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Based on the above information, the proposed medical office building is consistent with the General Plan designation and is in keeping with the goals, policies and standards of the Economic, Public Facilities and Land Use elements of the General Plan.

The subject property is zoned Downtown Hilo Commercial (CDH) by the County. Medical clinics and offices are listed as permitted uses within the Downtown Hilo Commercial zoning in the Zoning Code. Therefore, the proposed development is consistent with the County General Plan and with County zoning.

The proposed request is also consistent with the Envision Downtown Hilo 2025: Community-Based Vision and Living Action Plan, which was adopted by the Hawai'i County Council by Resolution No. 192-05 on November 22, 2005. EnVision Downtown Hilo 2025, 'Ike iā Hilo, is a Community-Based Vision and Living Action Plan for

Downtown Hilo. It incorporates six vision focus areas: Creating Economic Vitality; Preserving Our Environment; Strengthening & Sustaining Our Community; Enhancing Education, Culture and the Arts; Promoting Health and Safety; and Managing Growth. The proposed request will help implement, among others, Strategy 1.42 of the Living Action Plan under the "Creating Economic Vitality" element of the plan, which states to "Identify and work with landowners to help develop mixed use in empty, derelict buildings and vacant lots." The applicant is proposing to construct a medical office building on two vacant lots and is working with the County to be consistent with the Plan.

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, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, 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 Hilo Coast. These include surfing, fishing, boating, and other similar types of activities. There are identified public access areas to the shoreline near the subject property. The proposed development will not affect public shoreline accesses to the mountains or the shoreline.

The proposed development will not substantially affect scenic vistas or viewplanes. The applicant is proposing to construct a 2-story building no higher than 30 feet in height, which is much less than the height limit of 120 feet in Downtown Hilo. The project will not have an adverse impact on coastal recreational resources to the shoreline and coastal ecosystems. The project will not restrict access to coastal recreational resources along the shoreline.

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 Department of Land and Natural Resources – State Historic Preservation Division conducted an archaeological review of the property and determined that one archaeological feature consisting of a concrete structural foundation is present within the project area. The applicant has agreed to document this feature in conformance with DLNR-SHPD's recommendation to fulfill any mitigation measures

that would be needed for this feature. This will be conducted prior to the initiation of any ground disturbing activities within the project area. With the commitment in place, DLNR-SHPD believes that no archaeological resources will be affected by this project. A condition of approval will be added requiring the applicant to fulfill any mitigation measures required by the Department of Land and Natural Resources-State Historic Preservation Division.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i 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 in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kama'aina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the permit area: The project site is currently vacant of any structures. The site consists of a concrete foundation of a demolished structure, gravel, dirt and grass with one existing palm tree. With an agreed mitigation commitment in place between DLNR-SHPD and the applicant, DLNR-SHPD believes that no archaeological resources will be affected by this project.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline; therefore Hawaiian fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: Conditions of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD. There is no evidence of any traditional and customary Native Hawaiians rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. Thus, it is believed that the project would have no adverse impact relative to the cultural and historical resources of the area. To the extent to which traditional and customary Native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights.

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. Prior to the start of construction, the applicant shall secure Final Consolidation for TMKs: 2-3-009: 26 & 27.
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 one hundred and eighty (180) days 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. 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), Hawai'i County Code. Plans shall identify, if applicable, all proposed structures, fire protection measures, and other improvements associated with the proposed use.
5. The applicant shall construct concrete sidewalk improvements along the properties' frontage of Punahoa Street and Nawahi Lane meeting with the approval of the Department of Public Works and dedicate it to the County upon completion. The improved portion of the property shall be subdivided and dedicated to the County of Hawai'i within five (5) years from the effective date of this permit.
6. All driveway connections to Punahoa Street and Nawahi Lane shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
7. The project shall connect to the County's sewer line meeting with the approval of the Department of Environmental Management prior to the issuance of a Certificate of Occupancy.
8. The applicant shall comply with Chapter 27 - Flood Control, of the Hawai'i County Code
9. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared by a

licensed civil engineer and submitted to the Department of Public Works prior to issuance of any 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. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
11. 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 Hawai'i.
12. An Emergency Evacuation Plan shall be submitted to the Hawai'i County Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.
13. The applicant shall fulfill any mitigation measures required by the Department of Land and Natural Resources-State Historic Preservation Division for the concrete foundation prior to the issuance of Final Plan Approval. The applicant shall submit verification from DLNR-SHPD to the Planning Department.
14. Should any undiscovered remains of historic sites, such as 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.
15. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
16. 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.
17. 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 the Planning Department at 961-8288.

Sincerely,



Rell Woodward, Chairman
Windward Planning Commission

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cc: Ms. Jelena Clay
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Department of Land and Natural Resources/HPD
Ms. Susan Gagorik
Zoning Inspector
Plan Approval Section
Mr. Gilbert Bailado /