

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

January 26, 2015

Steven Shropshire
Shropshire Group
P.O. Box 1146
Hilo, HI 96721-1146

Dear Mr. Shropshire:

Special Management Area Use Permit (SMA 14-000058)

Applicant: Steven Shropshire, Shropshire Group, LLC

Request: Consolidate Four Lots and Resubdivide into Ten Lots and a Road Lot

Tax Map Key: 3-2-005:003, 004 & 005

The Windward Planning Commission, at its duly held public hearing on January 8, 2015, voted to approve the above-referenced request for a Special Management Area Use Permit to allow the consolidation of 4 lots and its subdivision into 10 lots and a road lot with related improvements. The project site is situated along the north (makai) side of the Hawai'i Belt Highway (State Highway 19) fronting the Mile Marker 19 at Waikaumalo, North Hilo, Hawai'i.

Approval of this permit 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. Final Subdivision Approval of the proposed subdivision shall be secured from the Planning Director within five (5) years from the effective date of this permit.
3. All vertical structures and land alteration activities shall be setback a minimum of sixty (60) feet from the top of pali, which shall be identified on all subdivision plat maps. This "top of pali" setback may be reduced to the minimum shoreline setback prescribed by Planning Department Rule 8, upon 1) the receipt of a valid

certified shoreline survey, or 2) the approval by the Planning Department of an acceptable geological study of the project site that confirms the stability of the top of pali from significant erosion.

4. Restrictive covenants in the deeds of all the proposed lots within the subject properties shall give notice that all vertical structures shall be limited to no more than twenty (20) feet in height.
5. Restrictive covenants in the deeds of all proposed lots within the property shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium property regimes on each lot. This restriction may be removed by amendment of this ordinance by the County Council. The owner of the property may also, in addition, impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State 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 contact the Department of Health-Hazard Evaluation & Emergency Response (HEER) Office and receive a clearance regarding elevated arsenic levels and/or oil contaminants within the soil prior to the receipt of Final Subdivision Approval.
7. Access into the proposed subdivision from the Hawai'i Belt Highway (State Highway 19) shall meet with the approval of the Department of Transportation.
8. The applicant and/or any private lot owner, shall comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, and Department of Health, which requires a NPDES permit for certain construction activity.
9. All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties. A drainage study of the property shall be prepared and submitted to the Department of Public Works prior to submittal of plans for Final Subdivision Approval.
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 in the State of Hawai'i.

11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
12. 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 State 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.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. 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. 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).
 - d. 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 shall initiate procedures to revoke the permit.

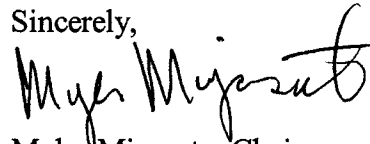
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Report.

Steven Shropshire
Shropshire Group
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Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Myles Miyasato, Chairman
Windward Planning Commission

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Enclosure: PC Findings Report

cc: All Aina Services
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
Department of Land & Natural Resources - HPD
Department of Health
DOT-Highways, Honolulu
Mr. Gilbert Bailado

**COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS**

SHROPSHIRE GROUP, LLC

SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (SMA 14-000058)

The applicant is proposing to consolidate 4 lots and resubdivide them into 10 lots and a road lot, and related improvements on approximately 9.7 acres of land within the Special Management Area. The subdivision will consist of lots averaging approximately ½ to 1 acre in size. The property is located along the north (makai) side of the Hawai'i Belt Highway (State Highway 19) fronting the 19 mile marker, Waikaumalo, North Hilo, Hawai'i, TMK: 3-2-005:001, 003, 004 & 005.

A requirement of the Special Management Area (SMA) Use Permit application is that a shoreline survey be submitted when the parcel abuts the shoreline, except as may be waived by the Planning Director when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline. The Planning Director agreed to the waiver with the understanding that that applicant agreed to a minimum setback of 60 feet from the top of pali for any structure. The top of pali will be identified by the applicant on the subdivision plat maps and confirmed by Planning Department staff, which will require a site inspection. Additionally, the Planning Director agreed that the 60-foot wide top of pali setback for any newly created parcel may be reduced upon receipt and approval of an acceptable geological study submitted by the applicant or new lot owner(s).

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 a 10-lot subdivision and related improvements on the subject properties will not have a significant adverse environmental or ecological effect upon the Special Management Area.

The proposed development is located on properties zoned Residential and Agricultural (RA-.5a), which allows only one single-family dwelling per building site. The applicant is proposing to consolidate the four (4) existing lots and re-subdivide them into ten (10) lots that will accommodate the construction of a single-family dwelling on each lot.

Under Planning Commission Rule 9-10 (H) (1), a proposed use, activity or operation may constitute a substantial adverse effect if it involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and viewplanes outlined in the General Plan or other adopted plans. The properties are not among those listed as historic properties in the Hawai'i State and National Register of Historic Places and are not profiled as a significant cultural and/or historic site in the General Plan. The properties have been disturbed by the past residential use and as a service station and commercial garage, which is part of the M. Kawahara Retail Service Station complex. DLNR-SHPD sent a letter dated March 18, 2013 regarding the rehabilitation of the M. Kawahara Retail Service Station complex. DLNR-SHPD confirmed that the facilities are eligible for the Hawai'i Register and that they supported the rehabilitation project.

Additionally, the subject properties are located on the makai side of the highway and do not adversely affect viewplanes of Mauna Kea in this area. As the property is sloped downward towards the ocean from the highway and is located along steep cliffs, the viewplanes to the ocean are not adversely affected. To further minimize any adverse visual impacts, the applicant is proposing a deed restriction by covenants to limit the building height to twenty (20) feet for future residences. As such, a condition of approval will be added reflecting this proposed deed restriction as recommended by the applicant.

Lastly, under Planning Commission Rule 9-10 (H) (9), a proposed use, activity or operation may constitute a substantial adverse effect 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. The subject parcel is in an area that is not mapped by the Federal Emergency Management Agency (FEMA) and is designated as "minimal tsunami inundation." 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 quality in the area of the subject property is mostly affected by emissions from natural and vehicular sources. The principal source of both short-term air and noise quality impacts associated with the construction of the proposed improvements is expected during construction, especially during grubbing and grading activities. These impacts can be mitigated through the utilization of best management practices and existing construction regulations. Given the limited nature of the improvements and overall scope of the project, no significant long-term air and noise quality impacts are anticipated. 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.

The proposed action will not create significant adverse impacts upon nearby and immediately adjacent properties. The subject properties, which are approximately 9.7 acres in size combined, are situated along the north (makai) side of the Hawai'i Belt Highway (State Highway 19) fronting the 19 mile marker. There are several older structures that were part of the former M. Kawahara Retail Service Station complex on a portion of the project site. Additionally, there is an old quarry site situated on the

northwest section of the project site. Lastly, there is an older dwelling located on Parcel 1-A.

The surrounding properties to the northwest of the project area are similarly zoned RA-.5a and consists of single-family dwellings and vacant land. Further north are lands zoned A-20a. Lands to the south across the Hawai'i Belt Highway are zoned RA-.5a and A-20a. Lands to the east are zoned A-20a. The ocean abuts the project site along the north boundary, which consists of high steep cliffs. As such, the proposed 10-lot residential-agricultural subdivision would not significantly detract from or conflict with existing uses within the immediately adjoining area and will not create significant adverse impacts to the adjacent properties.

The property is located within an area adequately served with essential services and facilities such as water, transportation systems and other utilities. Access to the properties is via the Hawai'i Belt Highway (Highway 19), which fronts the project site. Hawai'i Belt Road is a State owned and maintained roadway, which is a two-way, paved road that has an asphalt pavement width of approximately 24 feet within a 100-foot right-of-way. A condition of approval will be added requiring the applicant to comply with the requirements of DOT regarding access to the properties.

Parcels 3-A and 4-A will be individually served by one (1) existing 5/8-inch meter, which is limited to one (1) unit of water with an average of 400 gallons per day and suitable for only one single-family dwelling. The current water availability conditions in the area, which are subject to change without notice, only allow for one (1) unit of water, or one (1) 5/8-inch meter, per pre-existing lot of record. One (1) unit of water is available for Parcel 5 (formerly TMK: 3-2-002:031). The Department's existing water system facilities cannot support the proposed subdivision at this time. Should the subject application be approved, the applicant must designate, in writing, which lot within the proposed subdivision will be assigned the one available service. Further, the applicant shall be informed that the existing meter shall not be shared with the other proposed lot and the water system piping between the lots shall not be interconnected in any way. The applicant has indicated within the application that they will apply for a water variance from Section 23-84 of the Subdivision Code to allow the use of individual rainwater catchment systems for domestic consumption as well as for firefighting purposes on the remaining 6 lots.

The project will be serviced by private individual wastewater systems meeting the State Department of Health's requirements. Solid waste will be collected by commercial haulers and/or disposed of at the nearest transfer station. All utilities are available to the site. Police and fire services are located in Hilo Laupahoehoe Stations. Emergency services are available from the Hilo Medical Center on Waianuenue Avenue in Hilo.

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 Rural. The proposed project will complement the goals, policies and standards of the Land Use (General and Single-Family Residential), Economic and Housing Elements of the General Plan. Additionally, a Course of Action within the Land Use – Single-Family Residential Element of the General Plan states that “Urban areas shall continue to be Ninole and Ookala as well as the Laupahoehoe-Papaalooa area.”

The current State Land Use designation for the subject properties is Rural and the County's zoning is Residential and Agricultural (RA-.5a). The proposed single-family residential uses are consistent with the existing zoning for the subject properties.

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.

The subject properties are located along the ocean but in an area made up of steep cliffs. The subject properties could be impacted by coastal hazards and cliff erosion. As an option to minimize any possible coastal hazard or cliff erosion impacts, the applicant has agreed to a minimum setback of 60 feet from the top of pali for any structure unless an acceptable geological study is conducted and that confirms the stability of the pali from significant erosional effects, at which time the setback from the top of pali could be reduced to the minimum shoreline setback in place at the time of the submittal. Currently, the minimum shoreline setback is 40 feet.

There are no identified recreational resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources located on the project site. The proposed project 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 proposed request to allow the development of a 10-lot residential subdivision and related improvements will not have a significant adverse impact to traditional and customary Hawaiian Rights. 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. In view of the recent 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. 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 did not submit an archaeological study with the application. The properties have been disturbed by past residential use and by the use as a service station and commercial garage, which is part of the former M. Kawahara Retail Service Station complex. The properties are not among those listed as historic properties in the Hawai'i State and National Register of Historic Places and are not profiled as a significant cultural and/or historic site in the General Plan.

The valuable cultural, historical, and natural resources found in the Special Management Area Use permit area: The M. Kawahara Retail Service Station complex are located on a portion of the project site, which consists of two (2) residential units

(rentals) with an accompanied garage, service station and a commercial garage. The applicant received a letter dated March 18, 2013 from DLNR-SHPD regarding the rehabilitation of the M. Kawahara Retail Service Station complex. DLNR-SHPD confirmed that the facilities are eligible for the Hawai'i Register and supported the rehabilitation. The applicant and the Planning Department have requested comments from the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) regarding the proposed subdivision but have not received a response.

Possible adverse effect of impairment of valued resources: The proposed project will alter the land and may cause changes to the types of vegetation, if any, on the site. However, a condition will be included to require the applicant to cease work and notify the DLNR-SHPD should any remains be discovered on the site, until given clearance to proceed by the DLNR-SHPD.

Feasible actions to protect native Hawaiian rights: No valued cultural resources were identified for this site. Thus, to the extent to which traditional and customary native Hawaiian rights area exercised, the proposed action will not affect traditional Hawaiian rights.

Lastly, this approval is made with the understanding that the Applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, the request for a Special Management Area Use Permit to allow the consolidation of 4 (4) existing lots and its re-subdivision into 10 lots and a road lot, and related improvements on approximately 9.7 acres of land within the Special Management Area is approved.