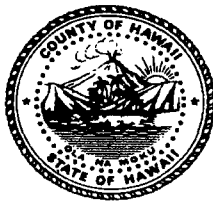


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County of Hawai'i

LEEWARD PLANNING COMMISSION

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

JAN 29 2020

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

Dear Mr. Mooers:

SUBJECT; Special Management Area Use Permit No. SMA 19-000073
Applicant: Kohala Shoreline, LLC
Permitted Use: Allow the Development of a 6-Lot Subdivision
Tax Map Key: 5-9-001:008

The Leeward Planning Commission, at its duly held public hearing on January 16, 2020, considered the above-referenced request to develop a six-lot subdivision on 37.88 acres of land within the Special Management Area. The property is located on the makai (west) side of Akoni Pule Highway directly across from the entrance to Kohala Ranch at Kahuā 1st, North Kohala, 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 of this permit.
2. The applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. Construction of single-family homes by individual lot owners or a master developer are covered by this approval and do not need subsequent Special Management Area review or permit.

Hawai'i County is an Equal Opportunity Provider and Employer

JAN 30 2020

4. The effective date of this SMA Use Permit shall be the effective date of the approved ordinance generated by the concurrent change of zone request (REZ 19-000237).
5. No land alteration, grubbing, landscaping or construction activities, including but not limited to, the stockpiling of debris, construction materials or equipment, shall occur in the shoreline setback area without securing a prior written determination of minor structure or activity pursuant to Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.
6. The applicant shall comply with all conditions of the approved ordinance generated by the concurrent change of zone request (REZ 19-000237), and any amendments thereof.
7. Prior to Final Subdivision Approval the applicant shall submit a comprehensive public access plan for review and approval by the Planning Director. In addition to the specific public access components represented by the applicant within the Final Environmental Assessment and its SMA Use Permit application, the public access plan shall also include the delineation of public access pathways and parking stalls, signage, operational hours, night-time fishing procedures, and related improvements and operational details. The applicant shall provide no less than 4 on-site public access parking stalls located adjacent to the northern access cul-de-sac along with a 10'-wide pedestrian access pathway from these stalls to the shoreline.
8. Metes and bounds of the ala loa trail, shoreline trail, shoreline access easement, and parking area shall be recorded with the Bureau of Conveyances as a deed instrument against all affected lots.
9. If, at any time, portions or a portion of the lateral shoreline trail are impacted by coastal erosion the trail will be moved mauka (landward) to ensure a 6-foot wide trail remains accessible.
10. All site plans submitted to the Planning Department for any future land use permits or development on the subject parcel shall include the location of the public pedestrian access and parking easements.
11. All proposed structures will be set back a minimum of 150 feet from Akoni Pule Highway to meet visual impact concerns.

12. All structures shall be sited mauka of the ala loa/jeep road, a minimum of 100-feet from the shoreline.
13. All proposed structures shall have a maximum height of 25 feet.
14. The applicant will dedicate and record an easement on each lot seaward of the ala loa/Jeep road for the entire length of the property for public access within six (6) months of Final Subdivision Approval.
15. The applicant shall conduct a drainage study of the project site for review and approval by the Department of Public Works, in conjunction with submittal of plans for subdivision review.
16. To avoid the potential downing of seabirds by interaction with outdoor lighting, no construction or unshielded equipment maintenance lighting shall be permitted after dark between the months of April to October. All permanent lighting shall be shielded in conformance with Hawai'i County Outdoor Lighting Ordinance (Hawai'i County Code Chapter 9, Article 14).
17. A Data Recovery Plan and Preservation Plan shall be prepared for the review and approval by the Planning Director in consultation with the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD). Proposed mitigation treatment for burial sites must be approved by the SHPD Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director prior to submitting plans for subdivision review and prior to any approval for any land alteration permits.
18. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the development and/or construction work, the applicant will cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division at (808) 933-7651.
19. Development of the subject property shall be completed in a manner that is substantially representative of plans and details contained within the Change of Zone and Special Management Area Use Permit Applications dated September 9, 2019.

Any substantial deviation from what is represented in these documents shall require amendments to this permit/change of zone ordinance.

20. The applicant will install necessary improvements at the intersection of Akoni Pule Road and the Kohala Shoreline LLC subdivision access roadway to the satisfaction of the State Department of Transportation.
21. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
22. 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. 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.
23. 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.

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

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 5

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

Sincerely,
Keith F.
Unger

Digitally signed by Keith
F. Unger
Date: 2020.01.29
04:50:22 -10'00'

Keith F. Unger, Chairman
Leeward Planning Commission

LKohalashorelineSMA19-0731pc
Enclosure: PC Findings

cc: Mr. Nathan P. Myhrvold/Kohala Shoreline, LLC
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Department of Transportation
State DLNR-HPD
Subdivision Section
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

KOHALA SHORELINE LLC

SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (SMA 19-000073)

Based on the following, SMA Use Permit No. 19-000073 is hereby issued to allow for the creation of a six-lot subdivision, including access roads, a shoreline access easement, shoreline access parking area and associated development on 37.88 acres of land situated within the Special Management Area. This approval is based on the following findings:

The applicant is requesting a Special Management Area (SMA) Use Permit to create a six (6) lot subdivision for the development of six residential home sites on 37.88 acres of land situated within the Special Management Area. The applicant has also simultaneously submitted a request to change the zoning district for the entire 37.88 acres of land from Single-Family Residential-15,000 square feet (RS-15) to a Residential Agricultural-5-acres (RA-5a) zoning district.

The applicant proposes to develop the homes sites on land with a moderate slope, a minimum of 150 feet *makai* (seaward) of the Akoni Pule Highway, a minimum of 40 feet in elevation above mean sea-level, and a minimum of 100 feet from the shoreline, *mauka* (landward) of the ala loa/jeep road. Covenants will restrict homes to a height of 25 feet as measured according to the Chapter 25 of the Hawaii County Code (HCC) and will require a color scheme featuring earth tones to minimize visual impacts to surrounding viewplanes. In addition, the applicant is proposing to install a four (4) stall parking area to accommodate public shoreline access through the subject parcel. According to the applicant, the proposed development of the six-lot subdivision will begin within six months of obtaining the proper permits and cost approximately \$4.0 million dollars.

The applicant suggests a change of zone from RS-15 to RA-5a would allow for the development of the subject site into six (6) appropriately designed residential structures which is far less than previously approved proposed developments of between 9 and 50 home lots. The proposed development will also ensure that safe and consistent public access to the shoreline remains open and available; as well as providing adequate vehicular parking for the public which currently does not exist at this site.

The grounds for approving development within the Special Management Area are based on HRS, Chapter 205A-26(2) (Special Management Area guidelines) and Rule 9-11(E) of the Planning Commission Rules of Practice and Procedure. Planning Commission Rule 9-11(E) states that the Authority (Planning Commission) may permit the proposed development only upon finding that:

1. The development will not have any substantial adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest;
2. The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS;
3. The development is consistent with the General Plan, Zoning Code and other applicable ordinances;

4. The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
 - a. The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
 - b. The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - c. The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

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.

Staff notes that the applicant has outlined the elevated construction, site development, and Best Management Practices (BMPs) that will be implemented during the project’s development phase. The following lists the mitigation strategies being employed to minimize impacts to the shoreline/coastal area of the project site.

- a) All house pads will be set back from the shoreline at a minimum elevation of about 40 feet above sea level, and outside the VE flood zone.
- b) All six residences will be required to utilize advanced individual wastewater treatment units such as the Cyclic Biological Treatment (CBT) system.
- c) Information concerning the tsunami and dam hazard zones and appropriate evacuation procedures will be provided to all lot purchasers and an evacuation plan will be developed and included.
- d) A detailed drainage study of the development will be submitted for review and approval by the Department of Public Works, in conjunction with submittal of plans for subdivision review. Drainage structures will be constructed to capture and retain the increase in rainfall runoff generated by the proposed development.
- e) All homes will be built to withstand Hurricane Category 2 force winds.
- f) Any culverts within the subdivision that might be built will be oversized to accommodate the 100-year rather than the 50-year storm.

- g) In associated with grading permits and an NPDES permit, the project engineer will complete a Storm Water Pollution Prevention Plan (SWPPP) that will effectively manage storm water runoff through emplacement of appropriate best management practices (BMPs).
- h) In addition, the project will adopt certain protocols for grading of the lots, similar to those in the *Recommended Construction Best Management Practices for Land Disturbance of Less than One Acre* that was approved by the Board of Directors of the Kohala Ranch Community Association in 2007.
- i) The project engineer will also explore the use of “mini-sediment basins”, as successfully implemented in the Kohala Estates subdivision, in order to achieve the goals of the SWPPP and the additional Recommended Construction BMPs
- j) A variety of additional specific site design measures derived from the U.S., Green Building Council (USGBC) requirements, which are consistent with the State of Hawai‘i CZM Program’s Low Impact Design (LID) Guidelines, will be implemented to specifically accomplish: 1) limitation of site disturbance; 2) a less engineered approach to site grading; 3) maximization of percolation and minimization of runoff, including re-direction of roof runoff to storage or use areas; and 4) alternative approaches to slope retention/stabilization.

In reviewing the proposed development against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1-10), it has been determined that the proposed project create a six-lot subdivision for the development of six home sites on 37.88 acres of land will not have a significant adverse environmental or ecological effect upon the Special Management Area. This determination is based on the following:

The proposed development does not involve an irrevocable commitment to the loss or destruction of any natural or cultural resource within the SMA, including but not limited to, historic sites.

The entire project parcel is located along the shoreline and within the Special Management Area. The SMA are lands extending mauka from the shoreline as delineated on the maps filed with the Planning Commission as of June 8, 1977, or as amended pursuant to Section 9-23 of the Planning Commission Rules.

The proposed development will not create significant adverse impact upon nearby and adjacent properties as the adjacent areas to the east and south are developed or are slated for development with single-family residential structures and associated uses. The mapped and sited archeological sites found throughout the subject parcel are being protected and or preserved though the completion and approval of preservation and burial treatment plans that include significant preservation buffers. The design of the proposed subdivision includes a wide setback from the coastline to protect and promote the existing public access trails (i.e., *ala loa*/jeep road) and the continued enjoyment of shoreline resources. *Mauka* to *makai* access will be established with the development of a public parking area and public access trail to the shoreline through the subdivision.

The property is located within an area adequately served with essential services and facilities such as transportation systems, water, and other utilities. Access to the project site will be from Akoni Pule Highway via two (2) proposed gated entrance roads. Water will be provided to the project under an agreement with the Kohala Ranch Water Company through a 12-inch water line along Akoni Pule Highway fronting the project parcel. Storage in the Kohala Ranch Water system is provided by an existing 500,000-gallon storage reservoir located approximately 1,400 feet east of the subject property. The applicant states that the tank is enough to meet domestic and fire protection requirements for the project. Six (6)-inch water lines will be installed at two (2) locations along Akoni Pule Highway to provide water for the proposed project. The capacity of the private system is adequate to accommodate the additional demand to serve the project's six lots, which is expected to be a maximum of 1,000 gallons per day. Additionally, restrictive covenants placed on the development by the owner will require homes utilize low-flow fixtures, roof run-off for irrigation, as well as low-water-use landscaping.

The Federal Emergency Management Agency's (FEMA) Flood Insurance Rate map (FIRM) indicates that most of the property is in Flood Zone "X" which indicates areas of minimal flood hazard. A narrow portion of the shoreline along the property is within Flood Zone VE, indicating "*a coastal area with a 1% or greater chance of flooding and an additional hazard associated with storm waves*"; there is a base flood elevation of 35 feet. The project area has no perennial freshwater bodies, but the property has five (5) gulches with ephemeral streams (i.e., a stream that flows only briefly during and following a period of rainfall in the immediate locality), however, only Keawewai Gulch is named. Four (4) single culverts and one (1) double culvert currently transmit storm runoff from *mauka* lands under Akoni Pule Highway across the subject property and into the gulches towards the shoreline. These deep gulches appear to not overtop their banks and represent only a minimal flood hazard to the property. Consultation with the U.S. Army Corps of Engineers (ACOE) indicates that Keawewai Gulch and one of the unnamed gulches are considered jurisdictional waters of the U.S., under Section 404 of the Clean Water Act.

Construction of the project will involve activities which has the potential to generate noise impacts; however, these impacts will be general in nature and short lived. 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.

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 Low Density Urban (ldu), Extensive Agriculture (ea), and Open (o). Most of the property is classified as ldu, which allows "residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six (6) units per acre". The proposed development is consistent with the General Plan LUPAG Map designation and will complement the goals, policies and standards of the Land Use (Economic, Environmental, and Land Use) Elements of the General Plan.

The subject property is currently zoned Single-Family Residential-15,000 square feet (RS-15) by the County, however, the applicant has submitted a concurrent Change of Zone Application to change to a Residential and Agricultural-5-acre (RA-5a) zoning district. The Residential and Agricultural zoning district provides for: activities or uses characterized by low density residential lots in rural areas where “city-like” concentrations of people, structures, streets, and urban level of services are absent in the Zoning Code. The applicant intends to create a six (6)-lot subdivision in preparation for six (6) proposed home sites and associated accessory development, as well as public parking for shoreline access, and easements for a coastal trail which are all permitted uses in the requested Residential and Agricultural (RA) zoning district. Therefore, the proposed development is consistent with the County General Plan and with County zoning.

Finally, the North Kohala CDP, which was adopted by the Hawai‘i County Council by Ordinance No. 08-151 on November 5, 2008, outlines Priority Issues for the Kohala Community. The Kohala Shoreline LLC project is compatible with Priority Issue No. 1 and its Goal, “Growth Management” which states that under the NKCDP growth is to be directed “to areas within and near existing town centers in order to preserve the districts open space and cultural resources; and to promote agriculture”. The area proposed for the project is bounded on the *mauka* side by similar rural-residential and agricultural-residential developments, which are also present in many areas *makai* of the highway from the subject property. This is also in keeping with the NKCDP Section 3.3, which calls for upscale developments to be limited to areas where they are already located. The subject property is located within an area depicted as “Existing Upscale Development” in the NKCDP.

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.

Coastal Recreational Resources: The proposed development will not substantially affect scenic vistas or view planes from the nearest 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. Access to and use of the entire shoreline within the subject parcel for recreational, subsistence, transportation, and spiritual purposes can be considered an ancient as well as ongoing practice; therefore, the shoreline is considered a valued cultural resource. While the current project area has no legal public rights-of-way, the coastal *ala loa* has continued to serve as a non-vehicular access corridor between Māhukona and Kawaihae. In 1994, the then landowner recorded a map with the Land Court that specified a shoreline setback for coastal public access in the area between the highwater mark and

six (6) feet inland of the “highwater mark” reestablishing a public access easement on the property. The project will be developed with consistent access to the shoreline from the parking area near the highway, as well as access along the shoreline and coastal areas from the *ala loa*/jeep road which will be protected from development or encroachments by the residents of the subdivision.

Floral and Faunal Resources: There were no listed, candidate or proposed threatened or endangered plant species that found on the subject property, and no rare plant species or ecosystems are present or nearby. As typical for this region, the property is thickly covered with non-native and invasive vegetation, primarily scattered kiawe with an understory of buffel grass. The area surrounding the subject property is similar in composition other than previously developed parcels which have common landscaping plantings. The mammalian fauna on the project area is composed mainly of introduced species, including mongoose and rats. None are of conservation concern and all are deleterious to native flora and fauna. No flora or faunal species which are listed or proposed for threatened or endangered species status have been documented on the subject site or on nearby sites. The closest plant critical habitat is located at 2,000-foot elevation in the Kohala Mountains. Clearing and grading of the site will be done in such a way that existing, mature vegetation above and/or below and excavated area is preserved. Vegetated buffers above construction sites will aid in the prevention of high-volume runoff across cut/fill areas. Vegetated buffers below construction sites will also aid in minimizing sediment runoff to the ocean.

Historic and Cultural Resources: An archeological inventory survey (AIS) and cultural impact assessment (CIA) report for the proposed action was included as part of the application. The AIS was finalized in January 2016 and approved by the State Historic Preservation Division (SHPD) in February 2016. Beginning in 2010, initial field work for the current AIS was conducted, followed by additional surveys, subsurface testing of selected features, and further review of historic maps. The work identified all of the 39 archeological sites previously recorded by earlier surveys, and refined site descriptions for five (5) of those sites. The latter included a corrected location and characterization of Feature D and Site 2496, a previously unrecorded rock shelter feature at Site 4013, a previously unrecorded rough terrace feature at Site 161331, an unrecorded northern extension of Site 16147, and an unrecorded marine shell scatter at Site 16151. Additionally, a portion of the previously undocumented Site 29271 (i.e., *ala loa* coastal trail/Jeep road) commonly labeled as the Māhukona-Kawaihae Trail was recorded across the property. The 2016 AIS recommended data recovery for 16 sites, plus portions of two (2) additional sites (2496 & 4013) that contain preserved burial features. All those sites were previously approved from data recovery based on a previous survey, with the exception of Sites 4010 and 16138, which were earlier approved for no further work by the SHPD. As noted in the Final Environmental Assessment for the project site, eleven (11) archeological sites (SIHP Sites 2496, 4010, 4012, 16138, 16140, 16141, 16143, 16144, 16146, 16151, and 16167) that have been previously approved for data recovery by SHPD will be reassigned a preservation treatment, reducing the total number of sites that will be subject to data recovery from 18 to 7 and increasing the number of preservation sites from 16 to 27. Pursuant to HAR §13-278, a plan addressing the data

recovery of the seven sites will be prepared and submitted to SHPD for review and approval. Preservation is now recommended for 27 sites, all but one of which (Site 4000) was approved for data recovery based on the original inventory survey. A new preservation plan that addresses these 27 sites will be prepared and submitted to SHPD for review and approval. SHPD approved the AIS for the proposed project which included revised treatment recommendations based on a reduced development footprint that will allow preservation rather than data recovery for certain sites. SHPD agreed to the revision of the mitigation commitment from data recovery to preservation for these sites. In addition to development and implementation of data recovery, preservation and burial treatment plans, the project has involved continuing consultation with native Hawaiian individuals and organizations.

Scenic and Open Space Resources: Waiaka'ilio Bay, on the northern end of the subject property, along with the entire coastal viewplanes from Akoni Pule Highway, is listed in the Hawaii County General Plan as scenic resource. Hawaii State Senate Concurrent Resolution (SCR) No. 179, H.D. 1, adopted in 1988, urged the retention of view and opens space *makai* (seaward) of Kawaihae-Māhukona-Hāwī Road from Kawaihae to Upolu Point. In 2001 SCR 146 summarized the long history of public sentiment to maintain viewplanes makai of Akoni Pule Highway. View plane impacts have been mitigated by the proposed design that

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.

After review, it has been determined that the proposed development 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 development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist.

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: As a result of the archeological studies conducted within the project area, forty (40) historic sites were identified. These include five (5) sites with burials evaluated as significant under criteria d and e, two (2) multi-feature trail sites as evaluated as significant under Criteria d and e, one (1) habitation/ceremonial site evaluated as significant under Criteria c, d, and

e; two (2) habitation sites evaluated as significant under Criteria c and d; and thirty (30) additional archeological sites evaluated as significant under Criterion d. Other potential cultural impacts that may result from the proposed project specifically relate to coastal access and use.

A detailed cultural-historical background was prepared by Kepa Maly in 2000 that included information relative to the general region known as *Kohala Waho*, of which the subject parcel is a part. The study suggests that the archeological resources present on the property are best understood within the context of the larger cultural landscape of *Kohala Waho*. In 2006, Rechtman Consulting prepared a cultural impact assessment (CIA) for a coastal property to the south, which shares a common history and similar previous land uses as the subject parcel. Several cultural practitioners were interviewed during the consultation and study process. It was concluded that if the archeological sites were treated in accordance with SHPD approved treatment plans, and access to and along the shoreline was in no way inhibited, there would be no cultural impacts due to the proposed development.

- The valued cultural, historical, and natural resources found in the rezoning area: Thirty seven (37) of these archeological sites listed above are considered to be a valued cultural resource and retain the potential to be impacted by the proposed development. To that end, the State Historic Preservation Division (SHPD) will be requiring that a revised burial treatment plan, an archeological preservation plan and a data recovery plan be implemented prior to any ground disturbance.
- Possible adverse effect or impairment of valued resources: When the 2015 nine-lot subdivision was proposed, site treatments were reconsidered, and plans were made to revise the existing data recovery, preservation, and burial treatment plans. With the reduction of the proposal to six lots, within no development *makai* of the *ala loa*/jeep road, recommended treatments have been further revised, and future data recovery, preservation and burial treatment plans will be further updated. In conformance with the recommendations of the latest archeological inventory survey, the burial treatment plan will be updated to reflect the proposed change in land use. Additionally, the 2000 burial plan had noted that any subsequent change in the project's components could require the applicant return to the Hawai'i Island Burial Council for review of proposed preservation measures.
- Feasible actions to protect native Hawaiian rights: In addition to development and implementation of data recovery, preservation and burial treatment plans (which require final review and acceptance by SHPD), the project has involved continuing consultation with native Hawaiian individuals and organizations. Both plans will be implemented prior to the commencement of any ground-disturbing activities. Throughout this process, native Hawaiian individuals and organizations will continue to be consulted in order to ensure that implementation actions are appropriate. With implementation of the conditions of approval, the proposed action will not affect traditional Hawaiian rights.

With implementation of the conditions of approval, 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.

Finally, at the January 16, 2020 hearing the Leeward Planning Commission voted to approve a revision to Condition No. 6 and No. 11 to ensure clarity of shoreline access parking and trails. Additionally, the Leeward Planning Commission voted to approve two (2) additional conditions recommended by the Director. The additional conditions were included to ensure that development does not occur within the shoreline setback area, and that the applicant will include all best management practices outlined in the application into project development.

Based on the above findings, it is determined that the proposed development 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.