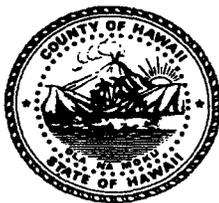


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Mayor

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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

MAR 13 2020

Mr. James Leonard
JM Leonard Planning, LLC
56 Laukona Street
Hilo, HI 96720

Dear Leonard:

SUBJECT; Special Management Area Use Permit No. SMA 20-000075
Applicant: Silent Owl
Permitted Use: Allows to Construct a 2-Story Office Building with Parking
and Related Improvements
Tax Map Key: 2-2-053:006

The Windward Planning Commission, at its duly held public hearing on March 5, 2020, considered the above-referenced request allow the construction of a 2-story office building with parking and related drainage, utility, and access improvements on 16,582 square feet of land within the Special Management Area. The property is across from the intersection of Mohouli Street and Kīlauea Avenue at Waiākea, South 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 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.

MAR 16 2020

3. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant(s), successor(s) or assign(s) shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping shall be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawai'i County Code.
4. All earthwork activity, including grading, grubbing, and stockpiling, shall conform to Chapter 10 – Erosion and Sedimentation Control, of the Hawai'i County Code.
5. The applicant shall place barriers on the north side of Maile Street, in the section parallel to the subject parcel, to ensure parking compliance until construction is completed.
6. The applicant shall submit estimated maximum daily water usage calculations for review and approval by the Department of Water Supply. The water usage calculations shall be prepared by a professional engineer licensed in the State of Hawai'i and should include the estimated peak flow in gallons per minute (GPM) and the total estimated maximum daily water usage in gallons per day, including all irrigation/landscaping uses.
7. The proposed project will require the installation of a reduced pressure type backflow prevention assembly, within five (5) feet of the meter on private property. The installation of the backflow prevention assembly's must be inspected and approved by the Department before the commencement of water service.
8. The applicant will submit a Solid Waste Management Plan to the County of Hawai'i Department of Environmental Management in conformance with the Departments Solid Waste Management Plan guidelines.
9. Connection of the proposed office building to the public sewer shall be done in conformance with Section 21-5 of the Hawai'i County Code prior to issuance of a Certificate of Occupancy.

10. The applicant will contact the Department of Public Works prior to construction regarding the requirement of a drainage plan for the proposed development.
11. 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).
12. 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.
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) 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.

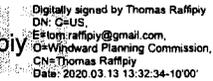
Mr. James Leonard
JM Leonard Planning, LLC
Page 4

15. 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.

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

Should you have any questions, please contact Alex Roy of the Planning Department at 961-8140.

Sincerely,


Digitally signed by Thomas Raffipiy
DN: cn=US
E=tom.raffipiy@gmail.com,
o=Windward Planning Commission,
CN=Thomas Raffipiy
Date: 2020.03.13 13:32:34-10'00'

Thomas Raffipiy, Chair
Windward Planning Commission

LSilentowISMA20-075wpc

Enclosure: PC Findings

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Department of Environmental Management
State DLNR-HPD
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

SILENT OWL, LLC

SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (SMA 20-000075)

Based on the following findings, Special Management Area Use Permit No. 20-000075 is hereby approved for the construction of an approximately 6,115 square-foot, two (2)-story office building and associated parking on 0.38-acres of land situated within the Special Management Area. The subject property is located across from the intersection of Mohouli St. and Kilauea Avenue, and adjacent to Maile Street, Waiākea, South Hilo District, Hawai'i, TMK (3) 2-2-053:006.

The applicant is requesting a Special Management Area (SMA) Use Permit to construct an approximately 6,115 square-foot, two (2)-story office building on approximately 0.38-acres of land situated in the Special Management Area.

The proposed office building is intended to serve as an office facility for primarily non-profit, child and family service organizations. The building, which is planned to be sited near the center of the parcel, will include family, conference, work, meeting, and office rooms and the necessary support areas and facilities to meet the broad needs of a service organization serving East Hawai'i. The development of the proposed project will be initiated upon securing all necessary governmental approvals and development related financing. The applicant estimates that the overall cost of the proposed development of the planned office building and related improvements to be approximately \$1.2 million.

The grounds for approving development within the Special Management Area (SMA) 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.

Because of the fully developed nature of the subject parcel and surrounding properties and lack of any native terrestrial ecosystem and threatened or endangered plant species on or surrounding the property, the proposed development of a two-story office building on the site is not likely to cause any adverse biological impacts. Similarly, as it appears that no archeological sites, resources, or traditional cultural practices are present on or near the project site, and there is no evidence of any traditional gathering practices taking place, the proposed construction and use of the planned office building would not likely impact any culturally valued resources or cultural practices.

According to the FIRM maps prepared by the Federal Emergency Management Agency (FEMA), the subject parcel is designated as Flood Zone “X” which is considered in an “Area of minimal flood hazard, usually depicted as above the 500-year flood level.” Due to the functionality of the required drainage improvements existing on site (i.e., drywells constructed previously) there is not expected to be any significant change to the projected amount of storm water run-off from the site following construction of the proposed improvements. According to the Department of Public Works (DPW), all development related runoff shall be disposed of on site and not directed toward any adjacent properties. Per discussion with DPW, staff was informed that a drainage plan may be required by the Plan Approval process in accordance with Section 25-2-72(3) of the Hawai‘i County Code.

The Waiākea Fishpond and associated Wailoa River State Recreation Area are considered “natural beauty” areas within Hilo town. From a visual resources perspective, the planned development will change the visual character of the property from that of a sealed parking lot to being fully developed parcel with a two-story office building and parking areas. This impact, however, will be mitigated by the building’s placement at the center of the property and the inclusion of landscaping as part of the surrounding parking area and property perimeter. The viewplane to the ponds from Maile Street or the adjacent State parcel will not be modified. 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 to construct a two-story office building and associated development on

0.38-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 400 feet from the shoreline but is entirely 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 are developed with residential, commercial, and recreational structures and associated uses. While the planned office building would be very much in character with the surrounding urban development, the potential visual impacts of the project would be mitigated by the buildings placement at the center of the property and the inclusion of landscaping as part of the design of the building and surrounding parking area. While the planned development of the property is not expected to have any impact on the adjacent recreational resources of the Wailoa River State Park, prior to the development of the existing parking area it was noted that employees, workers, and users of the planned facilities did not park on Maile Street to ensure park resources were not affected by the potential for illegal parking or other impacts associated with development of the subject parcel. As a result, the owner agreed to place barriers on the north side of Maile Street, in the section parallel to the subject parcel to ensure parking compliance.

While there appears to be no archeological sites or resources within the property, in the unlikely event that archeological resources or human remains are encountered during the development of the site, work will immediately cease and the SHPD and County Planning Director will be contacted.

The property is located within an area adequately served with essential services and facilities such as transportation systems, sewer, electric and other utilities. According to the Department of Public Works (DPW) the applicant shall submit estimated maximum daily water usage calculations for review and approval by the Department of Water Supply. The water usage calculations shall be prepared by a professional engineer licensed in the State of Hawai'i and should include the estimated peak flow in gallons per minute (GPM) and the total estimated maximum daily water usage in gallons per day, including all irrigation/landscaping uses. Additionally, the DPW recommends that the proposed project will require the installation of a reduced pressure type backflow prevention assembly, within five (5) feet of the meter on private property. The installation of the backflow prevention assembly's must be inspected and approved by the Department before the commencement of water service.

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. Due to the previously developed character of the site and the limited area requiring additional grading, the potential for grading related impacts are limited. As part of the construction, the applicant will ensure that the construction contractors perform all earth work and grading in conformance with all applicable laws and regulations, as well as implementing the following Best Management Practices (BMPs):

- Construction activities with the potential to produce sedimentation will not be allowed during unusually heavy rains or storm conditions that might generate storm water runoff.
- The total amount of land disturbance will be minimized, and the construction contractor will be limited to the delineated construction work area within the lots itself.
- The barrier fencing currently in place along the property boundary will remain in place so as to limit any potential impacts to the surrounding properties.
- Protective measures will be implemented so as not to allow any sediment to leave the site.

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 High Density Urban (hdu) which allows “*general commercial, multiple family residential and related services (multiple family residential -- up to 87 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 proposed development will allow the intended service organization or organizations to better serve the needs of East Hawai'i residents through the se of the proposed office building which has been planned and designed to meet their particular needs. The project area has nee previously fully developed and used for both residential and commercial uses, including its current use which is parking for Child and Family Services (CFS) employees whose facilities are located next door.

The Hilo Community Development Plan (Hilo CDP) adopted by the Hawai'i County Planning Commission, by Resolution No. 1 on May 21, 1975 guides decisions within the Hilo Urban area. The zoning guide map of the Hilo CDDP for the area of Kaiko'o indicates the existing commercial zoning designation for the Project site calls for the development of a connecting commercial link between the downtown and Kaiko'o planning areas that should be developed as a single integrated unit. The Hawai'i County Zoning Map for the South Hilo District designates the project site as General Commercial (CG-7.5). The proposed two-story office building and accessory uses (including the paring to and related improvements) are permitted uses within the CG zoning designated areas pursuant to Section 25-5-112(a)(43) and (d) of the Hawai'i County Code. The development will conform to the requirements of the zoning district relative to maximum allowable height, minimum yard setbacks, minimum off-street parking, and landscaping requirements.

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.

Recreational Resources: The project site is located adjacent to a 4.38-acre parcel owned by the State which is adjacent to the Waiākea Fishpond and is part of the 131.9-acre Wailoa River State Recreation Area, a landscaped park that provides recreational opportunities. Most park related activities are concentrated in areas across the arm of the Waiākea Pond in the main part of the park. The proposed project will not have any impact to the coastline or other areas utilized for public recreational activities in the adjacent park area, nor would it impede or hinder the public ability to access the shoreline or park resources.

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. Previous development, clearing and grading of the site has impacted the property such that there is *literally* no floral or faunal species found on the project site barring some small tufts of grass growing along the perimeter of the parcel.

Historic and Cultural Resources: As mentioned previously, nearly all of the features and remnants of historic Hilo town has been lost to the continual urban development of the city, especially along its major commercial corridors, such as Kilauea Ave. As noted in the application, the project site itself has been completely bulldozed and altered through its prior urban uses and construction of the existing paved and fenced parking area which encompasses the entire parcel. No archeological or cultural sites appear to be present, and the project site does not support any traditional resource use, nor are there any Hawaiian customary and traditional rights or practices known to be associated with the subject parcel. Additionally, SHPD, in reference to a previous grading permit, determined that the previous development (i.e., parking area) on the parcel made it unlikely that any historic properties would remain in the project area, and therefore provided a determination that "no historic properties will be affected".

Scenic and Open Space Resources: Within the general area of the project site are the Mohouli and Waiākea fishponds, which are considered significant for their scenic character in Hawai'i County. In the past there were little to no view opportunities over the property from public areas due to the overgrown and heavily vegetated nature of the project site. However, due to the applicant's recent removal of all vegetation, and the subsequent development of an open-air parking lot with fencing there are limited views to the ponds from select points directly fronting the subject parcel. After the proposed development is completed those views will be obscured, however, the applicant has mitigated view plane impacts by siting the building to be in the center of the parcel, and will include landscaping along the perimeter to further the scenic? and that the site is compatible with the surrounding visual environment.

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.

As it appears that no archeological sites or resources or practices of a potential traditional cultural nature (i.e., land form, vegetation, trails, etc.) are found to be present on or near the project site, and there is no evidence of any traditional gathering uses or other cultural practices associated with the subject parcel, the development and use of a proposed office building and parking area are not likely to impact any valued cultural resources and practices.

While no valued resources or traditional cultural practices are associated with the project site, in the unlikely event that archeological resources or human remains are encountered during planned development activities, work in the immediate area will cease, and the SHPD and County Planning Director will be contacted.

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.