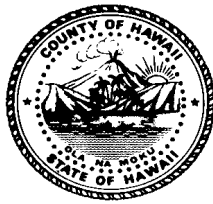


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Barbara DeFranco, Vice Chair
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County of Hawai'i

LEEWARD PLANNING COMMISSION

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

February 23, 2022

Ms. Ann Bouslog
PBR Hawai'i
1001 Bishop Street, Suite 650
Honolulu, HI 96813
VIA EMAIL

Dear Ms. Bouslog:

SUBJECT: Special Management Area Use Permit Application PL-SMA-2021-000004
Applicant: Waikoloa Land Company
Request: To Allow the Development of 900 Multi-Family Timeshare Units, Community Support Facilities, Golf Support Facilities, Public Parks and Paths and Related Improvements
Tax Map Key: (3) 6-9-008:013 (por.), 022, 025, 028 (por.), 029 (por.), and 033

This letter supersedes and replaces the previously sent letter dated January 17, 2022, with non-substantive changes for clarification.

The Leeward Planning Commission, at its duly held public hearing on December 16, 2021, voted to allow the development of 900 multi-family timeshare units, community support facilities, golf support facilities, public parks and paths and related improvements within approximately 133.8 acres of land identified as "Area B" and to allow the development of a new brackish water irrigation source and distribution system to support the landscape irrigation needs of the project within 3.1 acres of land identified as "Area C" of the proposed Kumu Hou at Waikoloa project situated within the Special Management Area. The properties are located between the 75- and 76- mile markers on Queen Ka'ahumanu Highway and west (makai) of the highway to the King's Highway Foot Trail, 'Anaeho'omalua and Waikoloa, South Kohala, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant(s), its successor(s) or assign(s) ("Applicant") shall be responsible for complying with all of the stated conditions of approval.

2. The effective date of this SMA Use Permit shall be the effective date of the approved Project District ordinance generated by the concurrent change of zone request (PL-REZ-2021-000005).
3. The Applicant shall comply with all conditions of the approved Project District ordinance and the State Land Use Decision and Order (Docket No. A89-637) or any amendments thereto.
4. The overall development shall substantially conform to the plans submitted and the representations made by the Applicant and as described in multi-permit application dated June 21, 2021, any supplemental information, and any representations made to the Leeward Planning Commission, except as may be further amended by subsequent ordinances and permits.
5. The Applicant shall update the approved public access plan, taking into consideration the adequacy of the existing accesses and to incorporate public access facilities proposed in the Kumu Hou at Waikoloa Master Plan and submit it for review and approval by the Planning Director prior to issuance of Final Plan Approval/Site Plan Approval for any portion of the project. Upon approval of the updated public access plan, the Applicant shall provide appropriate access as outlined in the public access plan or any amendments thereto. Such public accesses shall be provided in perpetuity and held by recorded covenant running with the land.
6. 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.
7. To mitigate visual impact concerns, development within the project area shall substantially comply with recommendations of the Visual Impact Analysis submitted with the application.
8. All utility lines shall be installed underground.
9. The Applicant shall comply with requirements of the approved overall landscaping plan for the Waikoloa Beach Resort or any amendments thereto.
10. The Applicant shall update the approved Water Quality Monitoring Program ("WQMP") to include all uses proposed within the Kumu Hou at Waikoloa Master Plan and submit it for review and approval by the Planning Director in consultation with the State Department of Health prior to issuance of Final Plan Approval/Site Plan Approval for any portion of the project. This updated WQMP

shall include monitoring for nutrients, fecal coliform and enterococci, and sediment analysis and shall implement measures outlined in the applications designed to protect water quality of groundwater resources and the near shore environment from excess nutrients reaching the ocean.

11. Prior to any well drilling activity on the subject property, the Applicant shall secure a Well Construction and Pump Installation Permit from the State Department of Land and Natural Resources-Commission on Water Resources Management.
12. Approval of an archaeological inventory survey of the Kumu Hou project area and approval of an archaeological preservation plan addressing the preservation of Sites 26871 and 26873 and portions of Site 31230 as well as maintenance agreements and updated preservation treatments along a portion of the Ala Loa (Forerunner) trail in proximity to "Area A" of the Kumu Hou at Waikoloa project, or as otherwise may be required by an approved AIS, shall be secured from the Department of Land and Natural Resources - State Historic Preservation Division ("DLNR-SHPD") prior to any ground disturbance or issuance of Site Plan Approval/Final Plan Approval for any phase of the development, whichever occurs first. Approved preservation buffer areas shall be depicted on any site plans for Site Plan Approval, subdivision approval, or other land alteration permits. Interim preservation measures shall be in place prior to the initiation of any construction or land disturbance activity in the project area.
13. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the DLNR-SHPD at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
14. The Applicant shall update the most current, approved Emergency Preparedness and Response Plan and submit it for approval by the Hawai'i County Civil Defense Agency prior to issuance of Final Plan Approval/Site Plan Approval for any portion of the project.
15. To protect any Hawaiian hoary bats in the vicinity of the property, barbed wire fencing shall not be used in the project area and woody vegetation over fifteen (15) feet in height shall not be disturbed, trimmed, or removed during bat birthing and pup rearing season of June 1st to September 15th without first conducting

surveys for bat nests and coordinating with U.S. Fish and Wildlife Service (“USFWS”) if nests are found. Surveys shall be conducted by a qualified biologist.

16. To protect the endangered Blackburn’s sphinx moth, the Applicant shall prevent infestations of tree tobacco by removing plants under three (3) feet tall. Where removal of taller tree tobacco is necessary, the Applicant shall provide a faunal survey of the area, conducted by a qualified biologist for review and approval, to the USFWS prior to cutting or removal of vegetation from the property.
17. To protect any seabirds (Hawaiian petrels, Newell’s shearwaters and band-rumped storm petrel) in the vicinity of the property, any lighting shall be fully shielded so that the bulb can only be seen from below bulb height. The lights shall be turned off when human activity is not occurring in the lighted area.
18. To minimize potential project impacts to the threatened Hawaiian goose (nēnē) and the endangered Hawaiian Stilt (ae‘o) the Applicant shall implement applicable animal avoidance and minimization measures recommended by the USFWS-Pacific Islands Fish and Wildlife Office.
19. The use of pesticides and herbicides in conjunction with all phases of operation shall conform with the applicable regulations of appropriate governmental agencies.
20. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai‘i County Code.
21. 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 professional civil engineer licensed in the State of Hawai‘i and submitted to the Department of Public Works prior to issuance of Final Plan Approval/Site Plan Approval. 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 for any portion of the development.
22. Should any drywells be installed, the Applicant shall implement the best management practices contained in the State Office of Planning’s *Low Impact Development-A Practitioner’s Guide*, for storm water management to minimize the impact of the proposed development on the existing area’s hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events.

23. 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.
24. A National Pollutant Discharge Elimination System (NPDES) permit and an Underground Injection Control (UIC) permit, if required, shall be secured from the State Department of Health before the commencement of construction activities.
25. The Applicant shall comply with all other applicable laws, rules, regulations, and requirements, including those of the Department of Water Supply, the Department of Public Works, the Department of Land and Natural Resources.
26. An annual progress report timed in conjunction with the combined annual progress reporting currently submitted by Waikoloa Land Company, shall be submitted to the Planning Director prior to the anniversary date of the effective date of this permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
27. Construction shall commence within five (5) years of the effective date of this permit and completion of fifty (50) percent of the units within fifteen (15) years of start of construction. An initial time extension may be granted by the Planning Director under 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 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, Zoning Code, or SMA Policies and Guidelines;
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the SMA Permit; and
 - 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).

If the Applicant requests a change in the proposed development, including but not limited to, an extension of time periods or other conditions required by the permit, the Commission or Director shall consider the extent to which the proposed action has changed in size, scope, intensity, use, location or timing, among other things and/or whether there have been changes in the environment and/or community where the project is located such that the impact of the project would be substantially different from the potential impact at the time the permit was initially approved.

If there has been a change in any of these characteristics, which may have a significant effect, the Commission will assess whether or not to grant a time extension, impose different or additional conditions, or rescind approval of the permit.


28. Should any of the foregoing conditions not be met or substantially complied with, 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.

Should you have any questions, please contact Tracie-Lee Camero of the Planning Department at (808) 961-8166 or by email at Tracie-Lee.Camero@hawaiicounty.gov or Christian Kay at (808) 961-8136 or by email at Christian.Kay@hawaiicounty.gov.

Sincerely,



[Michael Vitousek \(Feb 23, 2022 10:01 HST\)](#)

Michael Vitousek, Chairman
Leeward Planning Commission

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Attachment: Planning Commission Findings

Ms. Ann Bouslog
PBR Hawai'i
February 23, 2022
Page 7

cc w/att. via email: Waikoloa Land Company
Mr. Sidney Fuke
Department of Public Works
Department of Water Supply
State Department of Health
State Department of Land and Natural Resources
- State Historic Preservation Division
- Division of Forestry and Wildlife
GIS Section
Plan Approval Section
West Hawai'i Division

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
PLANNING COMMISSION FINDINGS

WAIKOLOA LAND COMPANY
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION NO.
PL-SMA-2021-000004

At the Planning Commission meeting on December 16, 2021, the Leeward Planning Commission voted to approve the subject Special Management Area Use Permit Application No. PL-SMA-2021-000004 as recommended by the Planning Director with amendments to the Condition No. 5 (Public Access Plan) and adding Condition 27 with verbiage that establishes a construction timetable and requirements for an administrative time extension. Based on the following findings Special Management Area Use Permit No. PL-SMA-2021-000004 is hereby approved to allow the development of 900 multi-family timeshare units, community support facilities, golf support facilities, public parks and paths and related improvements within approximately 133.8 acres of land identified as “Area B” and to allow the development of a new brackish water irrigation source and distribution system to support the landscape irrigation needs of the project within 3.1 acres of land identified as “Area C” of the proposed Kumu Hou at Waikoloa project situated within the Special Management Area. The properties are located between the 75- and 76- mile markers on Queen Ka‘ahumanu Highway and west (*makai*) of the highway to the King’s Highway Foot Trail, ‘Anaeho‘omalua and Waikoloa, South Kohala, Hawai‘i, TMKs: (3) 6-9-008:013 (por.), 022, 025, 028 (por.), 029 (por.), and 033.

The applicant requests a Special Management Area (SMA) Use Permit to allow the development of 900 multi-family residential timeshare units, community support facilities (including a community center, convenience retail center, maintenance operations center, additional employee and other parking), golf support facilities (including relocation of the golf clubhouse and driving range, and a new cart path), public parks and paths (including two gateway parks and open space features and pedestrian paths) and related improvements within approximately 133.8 acres of land, and to allow the development of a new brackish water irrigation source and distribution system to support the landscape irrigation needs of the project within 3.1 acres of land identified as “Area C” of the proposed Kumu Hou at Waikoloa (Kumu Hou) project.

The conceptual plan for “Area B” is shown in Figure 10 of the application and shows the timeshare units within 17 two-story buildings. The timeshare units would be supported by up to 40,000 square feet of building area for up to two community centers providing sales and meeting facilities, a pool, and other private recreational uses. Additionally, a convenience retail center of approximately 3,000 square feet is planned near the community center and an approximately 32,000 square foot operations center is planned to support the back-of-house housekeeping and maintenance services in support of the timeshare units. Relocation of the golf driving range and the clubhouse serving the King’s and Beach golf courses is proposed. The new clubhouse would be about 20,000 square feet in size and offer food and beverage facilities, cart storage and other support

facilities. Two public parks at the intersection of Ala Ihi Way and Waikoloa Beach Drive and well as pedestrian paths are also proposed.

The overall Kumu Hou project consists of 1,164 multi-family residential timeshare units, 25 single-family residential lots, new golf clubhouse and driving range, community center(s), convenience commercial center, about 126 acres of open space areas, about 3 acres of public parks and paths, and a brackish water well for irrigation. Most of the land encompassing the proposed Kumu Hou project area is currently part of the King's Golf Course (King's Course) situated *mauka* of the Kings Highway Foot Trail (King's Trail). According to the applicant, demand for golf at the King's Course has significantly diminished over the last 20 years despite an overall increase in resort visitor traffic. This trend and the extended closure of the resort/golf courses during the Covid-19 pandemic has caused long-term financial challenges for the resort and analyses indicate that the resort's current and long-term future demands could be supported with 27 golf holes at the resort (18 holes in the *makai* Beach Course and a reconfiguration of nine (9) Holes in the King's Course). Based on the preceding, the applicant has developed a master plan to develop the Kumu Hou project across three (3) non-contiguous areas totaling approximately 182.9 acres of land. The development of the Kumu Hou project will be facilitated by several land use entitlements, including the amendment of SMA Use Permit No. 25 (SMA 25) to remove the land areas covering the Kumu Hou project, three (3) new SMA Use Permits, and two (2) Changes of Zone.

Instead of amending SMA 25 to include the proposed uses, the applicant has chosen to apply for the subject SMA Use Permit to allow the development and operations of uses in "Areas B & C" of the Kumu Hou project area. According to the applicant, the new SMA Use Permit would allow the development of the proposed new facilities and amenities plus the ability to upgrade, repair, maintain, and operate existing or future facilities in the Kumu Hou project area. Furthermore, the new SMA Use Permit will support separate governance structures and conditions that will be relevant to differing development plans and ownership anticipated for each of the three (3) areas to be undertaken over an extended period of time.

The project will represent a long-term build-out with an estimated start date of 2025 and completed build out occurring around 2043 at over \$1.2 billion dollars. Approximately 1,450 jobs in development related and full-time equivalent and operational-related jobs would be created upon project completion. Once complete, the Kumu Hou project will generate an estimated 1,080 ongoing jobs. The applicant notes that these timeframes are conceptual and for modeling purposes, and that actual implementation of the master plan will be dependent on a myriad of factors (economic, market, finance, community, environmental, and other factors) that will manifest over time.

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, Community 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.

In review of the SMA guidelines as listed under HRS 205A-26(2)(A), the proposed development will not have any substantial 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 on the Special Management Area. Such adverse effects 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 eliminate planning options.

The proposed project did not meet the criteria in State law for the requirement to complete an environmental assessment (EA) or environmental impact statement (EIS).

Potential project impacts, shown in Table 11 of the Application, relate to threatened and endangered species, cultural and historic resources, water and coastal resources, noise, air, scenic and visual, traffic and other infrastructure impacts. In reviewing this proposed request against the factors that may constitute a substantial adverse effect, the Planning Director has determined that the proposed project will not have a substantial adverse environmental or ecological effect to the SMA, provided the mitigation measures shown in Table 11 are included as conditions of this SMA Permit and concurrent Change of Zone approval and are implemented by the applicant. This determination is further supported by the following:

In review of the SMA guidelines as listed under HRS 205A, the proposed development 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 objectives and policies of Chapter 205A, HRS include, but are not limited to, the protection of recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine and coastal resources, beach protection, and controlling development in coastal hazard areas.

Coastal Recreational Resources: While the land covered by “Areas B and C” of the proposed Kumu Hou project area and subject to this request are situated within the SMA, they are not considered shoreline areas as the *makai* most points of “Area B” and “Area C” are located approximately 3,000 feet and 9,700 feet from the nearest shoreline respectively. As such there are no significant coastal recreational resources located directly within these areas.

Condition 6 of SMA 25 (under which these land areas are currently covered) requires the applicant provide public access to ‘Anaeho‘omalua Bay and elsewhere along the shoreline, the King’s Trail, anchialine pond preserve areas, and other public recreational and cultural facilities in perpetuity. In support of this, the Director approved a *Public Access and Parking Plan* dated January 20, 1998; to date the applicant has made access improvements as required by the plan to the previously mentioned areas and resources largely in the area *makai* section of the Kumu Hou project area.

The proposed Kumu Hou project is designed to enhance and link access between the existing recreation areas, natural and cultural resources areas, open spaces, and public access facilities. These include: 1) a new, 8-foot-wide pedestrian pathway planned to connect the northern and southern ends of Waikoloa Beach Drive via Ala Ihi Way; 2) two (2) new gateway parks at the intersection of Ala Ihi Way/and the southern end of Waikoloa Beach Road; and 3) new pathways to the *makai* gateway park to provide multi-modal access to the Queens’ Marketplace and from there link to sidewalk and other paths leading to the shoreline and other natural and cultural resources.

Based on the preceding, the Director is recommending a condition of approval requiring that the existing public access plan be amended to include the public access facilities proposed in the Kumu Hou project area in order to create a comprehensive public access plan for the entire Waikoloa Beach Resort.

Historic and Cultural Resources: Three (3) draft Archaeological Inventory Surveys (AIS) were completed by Haun & Associates for the entire 182.9-acre Kumu Hou project area (including “Areas B and C”) in May 2021, August 2021 and October 2021 respectively. The most recent draft AIS identified a total of 14 sites with associated features, including nine (9) sites previously identified and five (5) newly identified sites. Of the 14, the draft AIS assesses three (3) sites as significant under Criterion “d” (information content) and Criterion “e” (cultural value).

Based on the consultation with State Nā Ala Hele Trail & Access Program (Nā Ala Hele) and Ala Kahakai National Historic Trail Program (Ala Kahakai), the AIS recommends the development and adoption of a site preservation plan for three (3) sites located in project “Area B” with no further work or preservation recommended for the other 11 Sites. The sites recommended for preservation include Site 26871 (trail), Site 26873 (lava tube complex with multiple features), and a portion of Site 31230 (trail).

The State Historic Preservation Division (SHPD) reviewed the August 2021 draft

AIS and asked the applicant to incorporate the comments Nā Ala Hele and Ala Kahakai provided in a revised draft of the AIS, which they did. However, at the date of this writing SHPD has not responded to a request for comment on the October 2021 draft AIS. Based on the preceding, a condition of this approval will require the applicant to prepare and secure the Planning Director's and SHPD's approval of an archaeological preservation plan prior to commencing any land alteration activities. Furthermore, should archaeological features be discovered during construction, a condition of this approval will require the applicant to contact the State Department of Land and Natural Resources and secure their clearance prior to continuing with any development activities.

A *Native Hawaiian Traditional and Customary Practices Assessment* report was submitted with the application. This assessment was designed to identify valued cultural, historical, or natural resources in the project area and the extent to which traditional and customary native Hawaiian rights are practiced in the project area. The assessment also determined the extent to which those resources would be affected or impaired by the proposed project and any feasible actions to be taken to protect native Hawaiian rights if they are found to exist. The study concluded that, 1) given the distance from the shoreline, there would be no impacts to shoreline fishing and gathering; 2) there is a disagreement on the cultural, historical, and archaeological significance of the trails in the project area; 3) there is concern over as yet unidentified historic properties, including burials in the project area; 4) there is concern over the impact of the proposed project on subterranean freshwater aquifers in the project area, should they exist; and 5) the view-plane of the general area will be adversely affected by the new project. Finally, the report made the following recommendations to address the concerns: 1) that the draft project AIS be submitted to SHPD for review and evaluation; 2) that SHPD, Nā Ala Hele and Ala Kaha Kai be further consulted by Haun and Associates to reach an agreement on the significance and mitigation of trails in the project area; and 3) that the project area be assessed by persons with expertise in subterranean hydrogeology in order to address the issues of a presence or absence of subterranean freshwater aquifers that some consider to be valued cultural resources. These recommendations have been followed and the outcomes are discussed within this recommendation report.

Scenic and Open Space Resources: Given the existing physical characteristics of the area, the proposed development of Kumu Hou is not anticipated to significantly impact coastal/ocean views from Queen Ka'ahumanu Highway or *mauka*-facing views from 'Anaeho'omalu Bay and the shoreline. Furthermore, due to the distance from the shoreline, existing vegetation, and proposed height of new structures (a maximum of 45 feet for residential and 30 feet for community/commercial structures), views of surrounding peaks and mountains are not expected to be significantly impacted.

To minimize visual impacts, the applicant is proposing to restrict the height of structures, careful selection and placement of landscaping, and develop structures with earth-toned and non-reflective materials. A condition of approval will require compliance with the recommendations contained in the report. Additionally, conditions of approval will require compliance with the LUC Decision and Order for the project, which mandates an 800-foot no-building buffer from the highway and will require the installation of underground utilities. As a whole, these conditions should mitigate any project-related impact to visual resources.

Coastal Ecosystems & Marine Resources: Marine waters located off the Waikoloa coastline in this area are classified as Class AA. The objective of the Class AA designation is to ensure these waters *remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or action.* To that end a study was prepared by Marine Research Consultants, Inc. in June 2021, to examine the potential impact on valuable coastal ecosystems and resources. The study indicated that although Nitrates (NO₃) were observed in the ocean waters fronting the project area, surveys of marine communities revealed a well-developed coral community. Similarly, the reef fish community off Waikoloa was observed to be typical of other sites along the majority of the Kona coast. This observation indicates that any nutrients that may occur in groundwater flux towards the ocean are either rapidly mixed with ocean water or is confined to a low salinity “lens” offshore. Continued monitoring of nearshore ocean water will ensure the current levels of Nitrate is not exceeded, and as discussed below, will potentially decrease in the future.

Short-term impacts on the marine environment from construction projects in this area could potentially result from airborne dust and increased silt that collects in stormwater runoff directed towards the ocean. While impacts are possible it will be mitigated by the distance of the proposed development from the ocean, as well as the use of stormwater management techniques. These techniques include utilizing drywells/seepage pits which would entrain any fugitive dust or silt before reaching the ocean, directing excess stormwater into more permeable landscaped areas further reducing runoff, and the use of construction erosion controls such as, filter socks, coir fiber logs, and small retention basins.

Long-term impacts on the marine environment could potentially occur from the use of fertilizer (nutrients) which can concentrate in groundwater flux towards the ocean. To understand these effects the applicant submitted an *Assessment of the Potential Impact on Water Resources of the Kumu Hou Project* which was completed in June 2021 by Tom Nance. The study revealed that the current amount of nutrients discharging to nearshore waters would be reduced with the development of the proposed project. It is assumed that by reducing the area of active golf course greens coupled with an increased use of R-1 treated wastewater applied as irrigation will result in a reduction in the total nutrient load entering the groundwater flux towards the ocean. Additional long-term impacts include an increase of impervious surface from the transition from golf course to residential uses. An increase in stormwater runoff could cause soil erosion and elevate potential impacts to groundwater from common residential pollution such as oil/gas from vehicles, animal waste, and soap/cleaners that enter the groundwater system. The use of drywells to address on-site drainage, not directing stormwater towards the ocean, and compliance with the Chapter 27, Flood Control, Hawai‘i County Code, will mitigate the potential impacts of increase stormwater inputs to the nearshore/ocean area. Additional Best Management Practices (BMPs) such as site appropriate landscaping and efficient sprinklers will also aim to mitigate impacts from the increase in stormwater. These will be added as conditions of approval.

To address the potential impacts of the proposed development on water quality, marine resources, and coastal ecosystems the applicant will implement BMPs as part of the National Pollutant Discharge Elimination System (NPDES) permit process as well as

complying with Chapter 10, Erosion and Sedimentation Control, Hawai‘i County Code, and State Department of Health (DOH) water pollution control regulations. Additionally, a condition of approval of the concurrent Project District rezoning will require any uses within the project area that create wastewater to connect to the Waikoloa Beach Resort Wastewater Treatment Plant which will bolster the amount of R-1 treated wastewater being applied for irrigation purposes.

In addition to the BMPS mentioned above, a condition of approval will require the applicant to update the resort’s Water Quality Monitoring Plan and program (as required by the LUC D&O for the entire WBC) to ensure any project related impacts to groundwater and ocean water are appropriately measured, monitored, and mitigated meeting with the requirements of the State Department of Health.

Finally, a condition of approval will require the applicant to secure a Well Construction and Pump Permit from the State Commission on Water Resource Management (CWRM) for the proposed brackish water irrigation wells in “Area C.” These wells are anticipated to draw and distribute approximately 0.31 MGD from the ‘Anaeho‘omalu aquifer to support a portion of the irrigation needs of the Kumu Hou project at full build-out.

Beach Protection: There are no beaches within the project area.

Coastal Hazards: Given the distance from the shoreline, the project area is not located within a tsunami evacuation zone. Furthermore, the project area is located in Flood Zone “X”, an area determined by FEMA to be outside the 0.25% annual chance floodplain. The development will be subject to the requirements of Chapter 27 – Flood Control, of the Hawai‘i County Code in order to minimize the effects of coastal hazards. In addition, all buildings will be constructed in conformance with Uniform Building Code specifications. Based on the preceding, the project area is not likely to be impacted by coastal hazards. To protect against other, non-coastal hazards (e.g., lava flow, wildfire, etc.), a condition of approval will be added to update the Resort’s Emergency and Disaster Preparedness Plan to include the Kumu Hou project area, and a condition of the concurrent Project District rezoning will require the applicant to install a Civil Defense Siren to cover the project area as required by the concurrency section of the zoning code.

Based upon the preceding information, the proposed development is consistent with the objectives and policies of Chapter 205A, HRS.

The proposed development is consistent with the County General Plan, South Kohala Community Development Plan (CDP), Zoning Code and other applicable ordinances. The County of Hawai‘i’s General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Resort Node (ren), which allows *a mix of visitor-related uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), single-family and multiple-family residential units, golf courses and other typical resort recreational facilities, resort commercial complexes and other support services.* The proposed development is consistent with the General Plan LUPAG Map designation and will complement the goals, policies, and standards of the Economic, Environmental, and Land Use Elements of the General Plan.

Additionally, the project area is covered by the South Kohala Community Development Plan (SKCDP), adopted by Ordinance No. 08 159. Several SKCDP goals, policies, and actions reference resort areas, including directing the development of

timeshares to the district's three (3) major destination resorts. Other goals, policies and actions include: protection of historical, natural, and cultural resources; requiring water conservation measures for new, large scale development projects; ensuring the quality of South Kohala's groundwater and marine resources (including the expansion of water quality monitoring); providing support for water and wastewater facility upgrades; promoting the prohibition of future injection wells in the SMA if wastewater is not treated to an R-1 level of water quality; fostering the preservation of scenic views and landscapes, and conducting all activities and uses with clear environmental stewardship and sustainability methods. While many of the preceding are not explicitly directed at resort areas, they are built into the proposed development proposal for the Kumu Hou project.

The applicant has concurrently submitted a Change of Zone request from the existing Open, Multiple-Family Residential-4,000 square feet (RM-4), Multiple-Family Residential-6,000 square feet (RM-6), Multiple-Family Residential-8,000 square feet (RM-8) and Village Commercial-10,000 square feet (CV-10) zoning districts to a Project District zoning district for 133.822 acres of land identified as "Area B." The Project District (PD) is intended to provide for a flexible and creative planning approach rather than specific land use designations. It will also allow for flexibility over time in the siting of specific uses and mixes of structural alternatives. The planning approach to create a PD would provide continuity in land uses and designs while establishing a comprehensive network of infrastructure, facilities, and systems. A variety of uses, as well as open space, parks, and other project uses are intended to be in accord with each individual PD objective.

The land encompassing "Area C" is currently zoned Open, and the proposed brackish water irrigation well and system is permitted in the Open district under HCC Section 25-4-11. Power lines, utility substations, public buildings. Sub section (b) states, *"Any substation used by a public or private utility for the purpose of furnishing telephone, gas, electricity, water, sewer, radio, or television shall be a permitted use in any district provided that the use is not hazardous or dangerous to the surrounding area and the director has issued plan approval for such use."*

The project site is located within an area adequately served with essential services and utilities such as private water, sewer, and other utilities. Conditions of approval of the concurrent PD rezoning will require the applicant to connect to the private utilities (e.g., water, wastewater) and provide local and area mitigation for impacts to the resort's private roadways and intersections and the State highway. Based on the preceding, the proposed development is consistent with the General Plan, SKCDP, and Zoning Code.

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' Āina" decisions, the issue relative to native Hawaiian rights, such as 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: A Draft Archaeological Inventory Survey of the subject property was completed by Haun & Associates in May 2021 and amended in August 2021 and again in October 2021. A Native Hawaiian Traditional and Customary

Practices Assessment was prepared by Christopher Monahan, Ph.D. in June 2021. In addition, a Biological Survey was conducted by Ron Terry, Ph.D. in May 2021 for the subject area. Finally, a Biological Survey report dated May 2021 by Geometrician Associates, LLC that included results of field surveys conducted in May 2020 and November 2020 for the entirety of the project area was submitted with the application.

The valuable cultural, historical, and natural resources found in the permit area:

The most recent draft AIS identified 14 sites with a total of 418 features, 13 complexes with two (2) to 240 component features within “Area B” of the Kumu Hou project area. No sites were found in “Area C”. The 14 sites identified in the AIS include nine (9) sites previously identified in archaeological studies of the area and five (5) newly identified sites, all of which were assessed as significant under criterion “d” (yielding information important for research on history or prehistory). Of these, three (3) sites have also been deemed significant under criterion “e” (cultural value) and proposed for preservation via a site preservation plan. These include Site 26871 (trail) and portions of Site 31230 (trail), which were identified as part of a *mauka-makai* trail network, and Site 26873, which was identified as the location of a previously excavated lava tube and other features on a pahoehoe rise, appearing to be part of the overall trail network linking to the natural pahoehoe area and the other trail sites and possibly led *makai* bound trail users in the direction of the ancient Ala Loa and/or ‘Anaeho‘omalu Bay. No further work or preservation is recommended for the other identified sites.

The Native Hawaiian Traditional and Customary Practices Assessment found that given the distance from the shoreline, there would be no impacts to shoreline fishing and gathering. The assessment recommended the submission of an AIS to SHPD, further consultation with agencies to agree on significance and mitigation, and an assessment of the project by a hydrogeology expert to assess groundwater and aquifers in this region. These recommendations were complied with during development of the subject application.

The biological survey report found that there are no designated or proposed critical habitats for endangered plant or animal species located within the project area.

Two (2) federally listed, threatened and endangered avian species (nēnē and ae‘o) and four (4) species of concern (‘auku‘u, ‘akekeke, ‘ūlili and kōlea) were identified within the project area and although not detected during the survey, it is possible that small numbers of the endangered endemic Hawaiian Petrel, the endangered band rumped storm petrel, and the threatened Newell’s shearwater birds fly over the area between summer and fall. Finally, Hawaiian hoary bats are assumed to be present and have been detected in kiawe forests of West Hawai‘i as well as the endangered Blackburn sphinx moth which has also been found at various locations throughout West Hawai‘i.

Possible adverse effect or impairment of valued resources and feasible actions to protect native Hawaiian rights: While the proposed project may have some effect on valued resources in the area, the proposed conditions of approval of this permit should minimize impacts and protect native Hawaiian rights.

Native vegetation may be destroyed by ground alteration and construction activities, however, there is no evidence that the flora in the area is particularly desired or used for cultural practices. There are no identified springs, pu‘u, native forest groves, gathering resources, or other natural features present on or near the permit area that

would support any traditional resource uses. Any project related impacts on endangered or threatened fauna will be addressed by conditions of approval recommended by the US Fish and Wildlife Service and Department of Land and Natural Resources-Division of Forestry and Wildlife.

As mentioned above, impacts on identified archaeological resources will be addressed through the approval of a draft AIS and Archaeological Preservation Plan for sites identified for preservation. As archaeological remains could inadvertently be uncovered during development activities, a condition of approval will be added to address and mitigate any inadvertent finds.

With implementation of the mentioned conditions of approval the proposed action will not affect traditional Hawaiian rights.