

***SPECIAL MANAGEMENT AREA USE PERMIT
ASSESSMENT APPLICATION***

**Shoreline Park Restrooms and Parking Lot
Lot B of Hokuli'a Phase 2, Amendment 6, at Hokukano 2nd
District of North Kona, Island and County of Hawai'i**

TMK No: (3) 8-1-034:027

Prepared for:
1250 Oceanside, LLC

Prepared by:
STEVEN S.C. LIM
Carlsmith Ball LLP
121 Waianuenu Avenue
Hilo, Hawai'i 96720
Telephone: 935.6644

June 2017



County of Hawai'i Planning Department

www.cohplanningdept.com · planning@co.hawaii.hi.us

East Hawai'i Office · 101 Pauahi Street, Suite 3 · Hilo, Hawai'i 96720
Phone (808) 961-8288 · Fax (808) 961-8742

West Hawai'i Office · 74-5044 Ane Keohokalole Hwy · Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770 · Fax (808) 327-3563

SPECIAL MANAGEMENT AREA USE PERMIT ASSESSMENT APPLICATION

APPLICANT INFORMATION (*Applicant is the person or entity actually responsible for the proposed use, activity or operation—typically the landowner or lessee.*)

APPLICANT'S NAME(S): 1250 Oceanside, LLC

ADDRESS: 5665 N. Scottsdale, Suite 135

CITY: Scottsdale STATE: Arizona ZIP CODE: 85250

EMAIL: dgrimsman@suncap.com

PHONE NUMBER(S): [Signature] bus: 808.930.4105 hm /cell: _____

SIGNATURE(S): [Signature] DATE: 6/21/17

LANDOWNER INFORMATION SAME AS APPLICANT (*may leave this section blank*)

LANDOWNER'S NAME(S): Hokuli'a Park and Cultural Sites Association, Inc.

ADDRESS: P.O. Box 247

CITY: Kealahou STATE: Hawaii ZIP CODE: 96750

EMAIL: gogino@snv.com

PHONE NUMBER(S): [Signature] bus: 808 329-6446 hm /cell: _____

SIGNATURE(S): [Signature] DATE: 6/21/2017

Landowner agrees to grant representatives of the County of Hawai'i the right to enter the property at reasonable business hours for the purpose of site inspection.

AUTHORIZED AGENT/ CONTACT PERSON

CONTACT NAME(S): Carlsmith Ball, LLP - Steven Lim/Jason Knable

ADDRESS: 121 Waianuenue Avenue

CITY: Hilo STATE: Hawaii ZIP CODE: 96720

EMAIL: jknable@carlsmith.com

PHONE NUMBER(S): [Signature] bus: 935-6644 hm /cell: _____

SIGNATURE(S): [Signature] DATE: 6/30/17

TAX MAP KEY(S): 8-1-034:027

SUMMARY

Applicant: 1250 Oceanside, LLC

Owner: Hokuli'a Park and Cultural Sites Association, Inc., a Hawai'i nonprofit corporation ("PCSA").

Property Location: Lot B of the Hokuli'a Phase 2, Amendment 6 subdivision (SUB-07-000589) within the Hokuli'a project, which is specifically located at TMK: (3) 8-1-034:027 (the "Property") See Exhibit 1a (Location Map).

Request: The Applicant is proposing to construct a restroom facility and parking lot on the Property, as an accessory use to the Hokuli'a Shoreline Park, which is located on adjacent TMK Nos.: (3) 8-1-004:003, 0094 and 7-9-012:003.

Tax Map Key <i>See Exhibit 1b</i>	(3) 8-1-034:027 (Lot B)
Total Land Area	1.494 acres
State Land Use Designation <i>See Exhibit 1c</i>	The Property is located within the State Land Use Agricultural District.
General Plan Designation (LUPAG Map) <i>See Exhibit 1d</i>	A majority of the Property is designated "Extensive Agricultural" (EA) by the County's LUPAG Map. A small sliver of the Property is designated "Open" per the County's GIS LUPAG Map, but we believe that this is incorrect, as the "Open" designation likely follows the State's Conservation District boundary located on the adjacent oceanfront Park property.
County Zoning Designation <i>See Exhibit 1e</i>	The Property is County zoned Agricultural District, minimum lot size 1-acre (A-1a), pursuant to Change of Zone Ordinance No. 96-7. The proposed Project is accessory to the principal permitted use of the open area recreational facility under the A-1a.
Special Management Area <i>See Exhibit 1f</i>	The entire Property is located within the Special Management Area (SMA).
Kona Community Development Plan ("KCDP") <i>See Exhibit 1g</i>	The Property is located within the KCDP Planning Area, but outside of the KCDP Kona Urban Area. The Property is not located within a KCDP Concurrence Zone.
Flood Insurance Rate Map <i>See Exhibit 1h</i>	FEMA's Digital Flood Insurance Rate Map designates the Property as being entirely within "Zone X" (areas determined to be outside the 0.2% annual chance floodplain).
County Tsunami Evacuation Zone <i>See Exhibit 1i</i>	The Property is located within the County's Tsunami Evacuation Zone.
HRS Chapter 343, Environmental Impact Statement ("EIS")	No known EIS triggers.
Archaeological	The archaeological and cultural resources within the Property have been studied by a State Historic Preservation Division-approved Archeological Inventory Survey, Mitigation Plan, and Burial Treatment Plan.
Flora/Fauna	The Property is sparsely vegetated with guinea grass, haole koa, and kiawe, with bare areas covered with pahoehoe lava. No protected habitat, or threatened or endangered plant or animal species were observed on the Property.
Public Access	There is currently no public access to the Property, however, the Applicant plans to amend the existing Grant of Easement and Covenants dated September 16, 1999 (Doc. No. 99-2062698) (which granted the County a public access easement over certain interior project roadways and the Park parcels), to allow public access to the Property. The Applicant intends to construct trail improvements to facilitate public access to the Park.
Access	Access to the Property is via Haleki'i Street, makai of Ali'i Drive, then south on Hawaii Loa Drive.
Water	Potable and irrigation water is available to the Property.

SPECIAL MANAGEMENT AREA USE PERMIT ASSESSMENT APPLICATION

I. APPLICANT / FEE OWNER

The Applicant is 1250 Oceanside, LLC ("1250"), whose mailing address is 5665 N. Scottsdale Road, Suite 135, Scottsdale, Arizona 85250. 1250 is the master developer of the Hokuli'a project.

The Hokuli'a Park and Cultural Sites Association, Inc. ("PCSA") is a private non-profit corporation that owns the Property. See Exhibit 2 (Limited Warranty Deed with Covenants - Parking Lot Parcel). The PCSA is also the owner of all of the coastal property fronting the Hokuli'a project, specifically identified as TMK Nos.: (3) 8-1-004:003 and 094, with the exception of the State's Hokukano Village Parcel located at TMK: 7-9-012:003. See Exhibit 3 (Limited Warranty Deed with Covenants - Shoreline Park). The subject properties collectively comprise the public Hokuli'a Shoreline Park (the "Park").

II. PROPOSED DEVELOPMENT

A. Location.

The Property is located within the master planned Hokuli'a project, which is makai (west) of the town of Kealahou, approximately 10 miles south of Kailua-Kona, and 1.5 miles north of Captain Cook. The Property is located in the lower half of the Hokuli'a project, which is makai (west) of the Ali'i Drive/Hulikoia Street intersection. The Property is bound to the east by Hawaii Loa Drive and to the west by the Park. The vacant lands to the north and south are comprised of agricultural lots created by the Hokuli'a Phase 2, Amendment 6 subdivision (SUB-07-000589), which the Planning Department approved on April 26, 2012. See Exhibit 1a (Location Map), Exhibit 1b (Tax Map).

B. Land Use Status.

1. State Land Use Designation. The entire Property is classified pre-existing State Land Use "Agricultural District" with no existing land use entitlement conditions of approval tied to the development of the Property. See Exhibit 1c (SLU Map).
2. General Plan Designation. The Hawai'i County General Plan¹ is the County's comprehensive land use policy for guiding long-range development on the Island of Hawai'i. It specifies goals, policies, and standards of development for the most desirable land uses on the island, and includes the Land Use Pattern Allocation Guide ("LUPAG") Map, which indicates the general location of designated land utilization areas.

¹ Ordinance No. 05-25, effective February 9, 2005, adopted the County of Hawaii's General Plan policy document, including the LUPAG Map.

The LUPAG Map designation for the majority of the Property is "Extensive Agriculture"².

According to the County's GIS LUPAG Map, a small makai (west) portion of the Property is designated "Open"³. *See* Exhibit 1d (LUPAG Map). We believe that the "Open" designation likely follows the State's "Conservation District" boundary found on the adjacent oceanfront Park property, so there is no "Open" designation within the Property.

3. County Zoning Designation. The entire Property is zoned Agricultural (A) District⁴, minimum lot size 1-acre (A-1a) by Change of Zone Ordinance No. 96-7 approved by the County on January 15, 1996. *See* Exhibit 1e (Zoning Map).
4. Special Management Area. The entire Property is located within the Special Management Area ("SMA"). The SMA boundary generally follows the lateral Old Government Road alignment within the Hokuli'a project and extends to the coastline. *See* Exhibit 1f (SMA Map).

The Property is also subject to SMA Major Use Permit No. 345 ("SMA 345"), which was issued by the Planning Commission on September 28, 1995. SMA 345 allowed the development of portions of a 730-lot agricultural subdivision and a 27-hole golf course within the SMA. The subject SMA permit did not address the current use proposed by this SMA Assessment Application, which is further detailed in the section below.

C. **Proposed Action.**

The Applicant is seeking approval to construct the following improvements within the Property (the "Restroom Improvements") *See* **Exhibit 4** (Site Plan, Floor Plan, Elevation Plans, Landscaping Plan, and Sign Plan):

1. 761 square-foot restroom facility consisting of ADA accessible men's and women's restrooms, including a janitor/storage room;
2. 3 exterior showers, a drinking fountain, picnic table and waste receptacles;

² The "Extensive Agriculture" designation is reserved for "[l]ands not classified as Important Agricultural Land. Includes lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as composition, slope, machine tillability and climate. Other less intensive agricultural uses such as grazing and pasture may be included in the Extensive Agricultural category."

³ The "Open" designation is reserved for lands intended for "[p]arks and other recreational areas, historic sites, and open shoreline areas."

⁴ The County's "Agricultural" zoning district applies to areas suitable for "agriculture and very low density agriculturally-based residential use, encompassing rural areas of good to marginal agricultural and grazing land, forest land, game habitats, and areas where urbanization is not found to be appropriate."

3. 24-foot wide A.C. pavement driveway and a new A.C. pavement parking lot consisting of 26 standard parking stalls and 2 ADA parking stalls, in addition to a 5-foot wide sidewalk from the parking lot to the restroom facility. 25 stalls are for the public and 2 stalls are for the Hokulia residents and the Park employees;
4. 4 to 6-foot wide walking trail from the restroom facility to the makai (northwest) Property boundary to facilitate public access to the Park through the State's Hokukano Village Parcel;
5. Civil defense siren and emergency phone;
6. Landscape removal, remediation, and planting; and
7. Directional signage indicating pedestrian access routes to the shoreline and sites of historical and cultural interest, and informational signage regarding the historic sites within the Park.

III. STATEMENT OF OBJECTIVES

A. **Director's Determination that the Proposed Action qualifies for an SMA Minor Use Permit.**

The Applicant is seeking a determination under Rule 9-10(e) of the Leeward and Windward Planning Commissions Rules of Practice and Procedure ("Planning Commission Rules"), as well as under HRS §205A-22, that Applicant's Restroom Improvements qualifies for an SMA Minor Use Permit.

B. **Rule**

Section 9-10, Assessment, of the Planning Commission Rules provide that:

(a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will: a) exceed \$125,000⁵ in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedure may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.

* * * * *

(c) The Director shall assess the proposed use, activity or operation upon the applicant's compliance with Section 9-10B based on the following criteria:

⁵ The valuation increased to \$500,000 by Act 153, SLH 2011, amending Section 205A-22, HRS.

(1) The valuation of the proposed use, activity or operation.

(2) The potential effects and significance of each specific circumstances of the use, activity or operation, according to the criteria of substantial adverse effect established by Section 9-10 H.

* * * * *

(e) Where it is found that the proposed use, activity or operation is not in excess of \$125,000 in valuation; and will not have a cumulative impact, or a substantial adverse effect on the Special Management Area, and after the review by the Public Works Director for compliance with Chapter 27, Flood Control, of the Hawaii County Code, the Director shall issue a Special Management Area Minor Permit.

(1) The issuance of such minor permit shall be subject to any reasonable terms or conditions.

(2) A copy of the Special Management Area Minor Permit issued shall be filed with the Commission and the Office of Planning of the State Department of Business, Economic Development and Tourism.

* * * * *

C. Objective

The Applicant is seeking approval to construct the proposed Restroom Improvements within the Property with the intent of encouraging more public use and enjoyment of the Park. The Restroom Improvements are an upgrade to the existing portable restroom facility and 25-stall parking lot located on TMK: (3) 8-1-034:014 and 015 ("Parcels 014 and 015"). The subject improvements were constructed over 15 years ago to satisfy the requirements of Hokuli'a Shoreline Park Management and Public Access Plan dated November 1998 ("Public Access Plan") and SMA Major Use Permit No. 401 ("SMA 401"). The proposed Restroom Improvements represent a significant investment to enhance the overall Park experience by providing a more traditional enclosed restroom facility and related amenities typically found at other newer public parks on the island. The Applicant is making this substantial investment in new Park infrastructure despite the Public Access Plan only requiring the construction of portable restrooms with minimal improvements.

The existing portable restrooms and parking lot were originally slated for construction to the south of the State's Hokukano Village parcel (TMK: 7-9-012:003) (the "State Parcel"), pursuant to Conservation District Use Permit HA-

2977, dated November 22, 2000. However, due to the sheer density of the archaeological sites later found within the Park, coupled with a failed effort to obtain a lease from the State to implement improvements within the State Parcel, the Applicant's predecessor-in-interest (1250 Oceanside Partners - Lyle Anderson) ultimately decided to construct the existing portable restrooms and parking lot on Parcels 014 and 015, just north of the State Parcel. The subject improvements and the Park were opened to the general public on August 1, 2002.

While the location of the existing restroom facilities were serviceable for public access to the Park for some time, the Applicant determined that locating the new Restroom Improvements on the Property would provide more functional connectivity to the existing lateral shoreline trails and the several "pocket beaches" located within the State Parcel. Locating the new Restroom Improvements on the Property would align closer with the location originally contemplated under the Public Access Plan.

1. Connectivity to the existing Park trails through the State Parcel.

The Applicant intends to construct trail improvements within the Property to connect the Restroom Improvements to the existing shoreline trails within the State Parcel. The trails within the State Parcel connect to a series of existing lateral shoreline trails that span over the rest of the Park parcels to the north and south. However, before the Applicant can formally connect to the existing trail system within the State Parcel, the Applicant will need to obtain the approval from the State Historic Preservation Division ("SHPD"). As was touched on in Section C above, the Applicant's predecessor-in-interest (1250 Oceanside Partners) previously tried to secure a lease over the State Parcel to implement Park improvements in 2002, but this effort was unsuccessful. Rather than granting a lease of the State Parcel, the Board of Land and Natural Resources ("BLNR") instead agreed to set aside the State Parcel to the SHPD for public park purposes at its May 10, 2002 hearing.

The set aside to SHPD was completed on June 4, 2003 through the Governor's Executive Order No. 3991 (the "EO"). The EO indicated that the State Parcel would be included in a Preservation Plan that the Applicant would implement in connection with the operation of the Park. The EO further stated that the Preservation Plan would supply details on the treatment, interpretation, and access to the historic sites within the State Parcel to ensure their protection and to provide opportunities to educate the general Park user about the sensitive nature of the sites.

Shortly after the Hokuli'a project emerged from bankruptcy on July 1, 2014, the current Applicant reinitiated discussions with SHPD to determine the most effective way to preserve and enhance the State Parcel for the public's benefit, while addressing SHPD's desire to maintain a high

level of autonomy over the management of the historic properties and cultural resources relating to the future use of the State Parcel. The SHPD and the Applicant ultimately determined that a Memorandum of Agreement ("MOA") between the parties and the PCSA (which would be approved by the BLNR), would be more appropriate than returning to the BLNR for a second time to request a State lease over the State Parcel.

The subject MOA is intended to provide the SHPD with the control they desire, while transferring the financial responsibilities to the PCSA for the preparation of the Preservation Plan, clearing of invasive vegetation, and the day-to-day maintenance of historic sites and creation of interpretive infrastructure for public use. The Preservation Plan will prohibit overnight camping and campfires, while only allowing pedestrian travel over the existing trail system within the State Parcel.

The MOA is currently pending review and approval by the BLNR, which is expected to act on the MOA later this year. Once the MOA is fully executed, the Applicant will obtain any required approvals from SHPD and the State Office of Conservation and Coastal Lands ("OCCL") to clear invasive vegetation within the State Parcel, which will provide the necessary access needed to investigate and complete the required Preservation Plan. Shortly following the SHPD approval of the Preservation Plan, the Applicant will process trail improvement plans with the SHPD and OCCL, pursuant to Conservation District Use Permit HA-2977.

The Applicant will only open the Restroom Improvements to the public when the SHPD determines that the Applicant has implemented the required Preservation Plan protocols and OCCL confirms that the Applicant has completed the required trail improvements within the State Parcel. The existing portable restrooms and parking lot on Parcels 14 and 15 will remain open to the public during this process and will only close when the Applicant opens the Restroom Improvements to the public.

2. Public Access Easement.

The Property is controlled by the PCSA, which is an entity that 1250 created solely for the purpose of owning and maintaining the Park and cultural sites within Hokuli'a in perpetuity. Assuming that this request for a SMA Minor Use Permit is approved, the PCSA plans to process an amendment to the existing Grant of Easement and Covenants dated September 16, 1999 (Doc. No. 99-2062698). The subject Grant provides the County with public access rights over the Park parcels, including the existing portable restrooms and parking lot on Parcels 14 and 15, as well as the interior project roadways leading to the current parking lot site. *See Exhibit 5* (Grant of Public Access Easement and Covenants).

The PCSA intends to expand the scope of the subject Grant to provide additional public access rights over the Property and the adjoining roadways to facilitate public access to the Restroom Improvements and the Park. The Applicant has already created the public access easement over the Property through SUB-07-0000589, which designated Easement 30 for public access and public parking purposes. The PCSA plans to include the subject easement in the amended Grant to the County and will process this Grant concurrently with the processing of design plans for the Restroom Improvements. For all functional purposes, the PCSA already considers the Property a part of the Park, and the amendment to the subject Grant will formalize its inclusion into the Park.

3. Staging Area and Construction Waste Disposal

The Applicant intends to stage all construction equipment on TMK: (3) 8-1-034:001, which is approximately 900 feet from the shoreline.

The Applicant will utilize any excavation material generated at the Property for fill to create farm dwelling house pads within the Hokuli'a project.

The Applicant will also maintain on-site construction dumpsters to handle any construction debris generated by the proposed construction activities. All construction waste will be properly disposed of at the County's West Hawaii Landfill site with a completed Notice of Authorization to Dispose filed with the County Department of Environmental Management - Solid Waste Division. The Applicant will also contact the County's West Hawaii Landfill at least 24-hours prior to any construction waste disposal activity.

4. Construction Cost Estimate and Construction Schedule

Tinguely Development, Inc., estimates that the total value of the construction to complete the Restroom Improvements is approximately **\$491,668.24**. *See Exhibit 6* (Tinguely Development, Inc. estimate dated June 29, 2017).

The construction of the Restroom Improvements would begin after the completion of the necessary design plans and the granting of all the necessary permits. Assuming that this SMA Minor Use Permit request is granted, the Applicant anticipates the design and permitting for the Restroom Improvements to take approximately 4 to 6 months to complete. The Applicant anticipates that the subsequent construction of the Restroom Improvements will take approximately 6 to 8 months to complete.

5. Additional Planning Department Interpretation

The Property is designated "Agricultural District" by the State Land Use Commission and is County zoned "Agricultural", minimum lot size 1-acre. HRS Chapter 205-2 (d)(13) allows the development of "open area recreational facilities" within the State's "Agricultural District".

HCC Section 25-5-72 (7) also states that the following are permitted uses in the County's Agricultural District: "*Campgrounds, parks, playgrounds, tennis courts, swimming pools, and other similar open area recreational facilities, where none of the recreational features are entirely enclosed in a building.*"

The prohibition regarding enclosed recreational features, as discussed in the HCC section cited above, were likely intended to restrict the construction of gymnasiums and other large enclosed major recreational facilities within the Agricultural District. The subject restriction should not apply to supportive accessory uses, such as the enclosed restroom facilities proposed by this SMA Assessment Application. We are unaware of any existing Special Permits for park restrooms or similarly enclosed accessory uses in the Agricultural District. Assuming that the Planning Department grants the requested SMA Minor Use Permit, the Applicant respectfully requests that the Planning Department also provide a written interpretation confirming that the subject Restroom Improvements (which are intended to serve the Park) are an allowable accessory use to the permitted use of the open area recreational facility within the Agricultural District.

IV. DESCRIPTION OF ANTICIPATED IMPACTS OF THE PROPOSED PROJECT ON THE SPECIAL MANAGEMENT AREA (SMA).

A. Description of the area involved including existing uses, structures, vegetation, and other features.

1. Site characteristics.

The vacant Property is relatively flat with a gentle terrain typically associated with properties near the coastline in the area. The Property is also sparsely vegetated with guinea grass, haole koa and kiawe, with bare areas covered with pahoehoe lava.

The Property also contains a large archaeological preservation/burial site complex (Site No. 21813), which is almost entirely surrounded by a dry stack rock wall located along a 20-ft wide preservation site setback buffer approved by the SHPD. The Applicant plans to complete the remaining portion of the rock wall along the 20-ft buffer that encroaches into the

State Parcel, as soon as the BLNR approves the MOA and the proper authorizations are obtained from the State.

2. **Soils.**

The soil within the Property is of volcanic origin and not well suited for agricultural uses. Soils in Hawaii are commonly rated in terms of three classifications systems: (1) Soil Survey, (2) Detailed Land Classifications and (3) Agricultural Lands of Importance to the State of Hawaii. The classifications are discussed as follows:

- a. Soil Survey: The soils on the Property are identified by the *Soil Survey of the Island of Hawaii* (USDA-SCS 1973), which was prepared for the United States Department of Agriculture, Soil Conservation Services (USDA). The USDA Soil Survey confirms that the entire Property consists of "*Lava flows, pahoehoe*" (rLW) type soil.

According to the USDA Soil Survey, "*pahoehoe lava has no soil covering and it typically bare of vegetation except for mosses and lichens.*" *bedrock covered in places by a thin layer of soil material*", therefore, the soils within the Property are not conducive for agricultural purposes.

- b. Detailed Land Classification: Based on the five-level productivity rating system from the Land Study Bureau's 1967 *Detailed Land Classifications, Island of Hawaii* (Baker, et al., 1965) where "A" represents the highest rating and "E" the lowest, the Property is rated "E" or very poor for agricultural productivity. See Exhibit 1j (LRB Map).

- c. Agricultural Lands of Importance to the State of Hawaii: The Agricultural Lands of Importance to the State of Hawaii ("ALISH") classification system identifies three (3) types of agricultural lands (Prime, Unique, and Other Important Lands), based on characteristics such as soil quality, growing season and moisture supply. The entire Property is unclassified by ALISH classification system, indicating that the Property is not important for agricultural production. See Exhibit 1k (ALISH Map).

3. **Natural Hazards.**

The potential natural hazards that the Property could be subjected to include flooding, volcanic hazards and earthquakes.

- a. Floods: Federal Emergency Management Agency's Digital Flood Insurant Rate Map (DFIRM), Panel 1551660939C, designates the entire Property as being within preliminary "Zone X" or areas determined to be outside the 0.2% annual chance flood plain. The

Property also contains no streams, wetlands, or anchialine ponds. See Exhibit 1h (DFIRM Map).

The Applicant's project engineer also prepared a Drainage Report for the Restroom Improvements dated June 23, 2016. The Applicant plans to construct 2 seepage wells to capture and mitigate any increased drainage caused by the proposed improvements. With these drainage improvements, the subject report confirms that there should be no increase in runoff flow or volume discharging from the site. See Exhibit 7 (Drainage Report).

- b. Coastal Hazards: The Property is located within the County of Hawaii Civil Defense evacuation area for hazards due to tsunami and possible surges from hurricanes. See Exhibit 1i.
- c. Volcanic and Earthquake Hazards: According to the United States Geological Survey map, the Property is located within Lava Flow Hazard Zone 3, on a scale of ascending risk 9 to 1. See Exhibit 11. The Zone 3 designation starts just south of Honaunau and extends north until it transitions to the Zone 4 designation near Parcels 14 and 15.

The Building Code designates the entire island of Hawaii in Earthquake Zone 3 and contains certain structural requirements to address the relative seismic hazards.

4. **Existing access and utilities.**

- a. Access: Entry to the Property is off Ali'i Drive onto Haleki'i Street, then onto Hawaii Loa Drive.
- b. Utilities: Electrical power service will be provided by Hawaii Electric Light Company, a public utility company. Hawaiian Telecom will provide the necessary emergency telephone service.
- c. Water Resources: Potable and irrigation water will be made available through a waterline that fronts the Property. Landscaping will incorporate plants adapted to leeward coastal conditions, and it is expected that irrigation may only be required for establishing new plantings and occasional watering of the plants.
- d. Wastewater: The Property is not served by, or adjacent to the County of Hawaii sewer system, however, the Restroom Improvements will be connected to the Hokuli'a private wastewater treatment plant, which has adequate capacity to service the proposed Restroom Improvements.

- e. Solid waste: The primary solid waste disposal facility serving the Property is located at the County's Pu'uanahulu landfill. The nearest transfer stations are located in Keauhou and Napo'opo'o (Ke'ei Station). The Restroom Improvements will generate little solid waste.
- f. Police and Fire Protection and Medical Services: Police protection service is provided by the County's Kona Police Station located in Kailua-Kona. Fire protection services are provided by the Kailua Fire Station in Kailua-Kona. Emergency medical services are provided by Kona Community Hospital in Kealahou. These facilities are adequate to serve the existing area requirements.

5. **Fauna and flora.**

A botanical survey and a faunal survey for the entire Hokuli'a project was included in the Villages at Hokukano Final Environmental Impact Statement approved by the County in 1993. There are no endangered, threatened or candidate plant or animal species within the Property. The area is not included or proposed as a critical habitat for protected species. Mammal species are expected to be found within the Property, including mongoose, feral cats and dogs, which are common species found throughout the island. Common winter migratory shorebirds such as plover, Ruddy Turnstone, and Wandering Tattler, were found in the coastal areas.

The current vegetation cover is generally light on the Property, consisting primarily of guinea grass (*Megathyrsus maximus*), haole koa (*Leucaena leucocephala*), and kiawe (*Prosopis pallida*). No endangered plant species listed by the U.S. Fish & Wildlife Services or State as threatened or endangered, proposed, or a candidate species or "species of concern" occur on the Property or in the immediate vicinity.

6. **Valued Cultural, Historical and Natural Resources.**

The Applicant has spent a considerable amount of time and resources to prepare the extensive archaeological work for the Hokuli'a project. In 1997, an initial Archaeological Inventory Survey ("AIS") was completed for the entire Hokuli'a project area, which included the Property. The State Historic Preservation Division ("SHPD") approved the AIS on January 22, 1997 (Log No. 18801, Doc. No. 9701RC05). The Applicant's archaeological consultants prepared 2 additional addendum AIS studies in 1999 and 2014 to test for possible burial sites identified in the 1997 AIS. The SHPD accepted the 1999 AIS addendum on December 8, 2000 (Log No. 26642, Doc. No. 0012PM02) and the 2014 AIS addendum on October 14, 2014 (Log No. 2014.2590, Doc. No. 1410MV09).

In 1999, an integrated Archaeological Mitigation Plan ("IAMP") describing data recovery, preservation and archaeological monitoring were submitted to the SHPD for review and approval. On September 7, 1999, the SHPD accepted the data recovery plan component (Log No. 24063, Doc. No. 9909PM09). The monitoring and preservation components were accepted by the SHPD on September 15, 1999 (Log No. 24094, Doc. No. 9909PM16).

On May 14, 2001, the SHPD amended the IAMP to require additional monitoring and resurveying of portions of the Hokuli'a project located in priority development areas, because of the discovery of multiple previously undocumented archaeological sites during project's implementation.

In response to the 2001 IAMP amendment, the Applicant submitted a draft report titled "*Archaeological Monitoring Report for Priority Areas 1B, 5, 6, and 7 Hokuli'a Subdivision Houanino 3-4, Hokukano 1-2, Kanaeue 1-2, Haleki'i, Ke'eke'e 1-2, Ilikahi, Kanakau 1-2, Kalukalu 1-3, and Ono'uli 1 Ahupua'a, North and South Kona Districts, Island of Hawaii, TMK: (3) 7-9-12:004, 006, 0098, 011, 029; 8-1-04:003, 0665, 068, 078, 079, 083, 085, 087, 089, 090; 8-1-26:023, 034; 8-1-32:001-017, 019-026, 028-036, 038-053, 056-059; 8-1-033:001-013, 018-025; 8-1-034:001-024; 8-1-35:001-003, 005-007; 8-1-36:001-002, 004-006*", dated June 2015, which covers the Property. On May 15, 2017, the SHPD approved the subject Archaeological Monitoring Report.

The Applicant also submitted to SHPD a Burial Preservation Plan ("BTP") for Hokuli'a dated September 5, 2003, which covered historic sites 21752, 21753, 21754, 21764, 21765, 21766, 21767, 21769, 21770, 21813, 21816, 21817, and 21819. The BTP proposed that all surface burial sites would be located in an easement matching a permanent 20-ft "no build" buffer zone. The permanent buffers zones were required to be "*defined by native vegetation or low stone walls, constructed of local basalt boulders and cobbles which would enclose the component burial feature(s)*". The BTP also required the Applicant to erect a gate to allow proper access to the burial site for lineal descendants and to provide access for periodic maintenance. The SHPD approved the BTP on April 22, 2004.

As previously discussed in Section IV.A.1. above, the Property contains a large archaeological preservation site complex containing a surface burial, namely Site No. 21813. Site No. 21813 is almost entirely surrounded by dry stack rock wall, which is located along the 20-ft wide preservation site setback buffer approved by the SHPD, pursuant to the requirements of the BTP. The Applicant plans to complete the remaining portion of the rock wall buffer along the 20-ft buffer that encroaches into the State Parcel, as

soon as the BLNR approves the MOA and the proper authorizations are obtained from the State.

A disk containing the June 2015 Archaeological Monitoring Report and its May 15, 2017 SHPD approval letter, and the 2003 BTP and its April 22, 2004 SHPD approval letter are enclosed as **Exhibit 8** for reference.

B. Description of surrounding area and land uses.

As shown in Exhibit 1a, the Property is located in the lower half of the Hokuli'a project, which is makai (west) of the Ali'i Drive/Hulikoa Street intersection. The Property is bound to the east by Hawaii Loa Drive and to the west by the Park. The vacant lands to the north and south are market agricultural lots created by the Hokuli'a Phase 2, Amendment 6 subdivision (SUB-07-000589), which the Planning Department approved on April 26, 2012.

The vacant agricultural lots that border the Property to the north and south are similarly classified "Agricultural District" by the State Land Use Commission, zoned "Agricultural" (A-1a) under the Hawaii County Zoning Code, almost entirely designated "Extensive Agriculture" with some "Open" designation on the LUPAG map (see discussion in Section II.B.2 above regarding "Open" designation), and located within the SMA. The Park is classified "Conservation District" by the State Land Use Commission, County zoned "Agricultural" (A-5a), and designated "Open" by the LUPAG Map.

C. Description of how the proposed project will affect the area involved and surrounding areas.

The Restroom Improvements also referred to herein as the "Proposed Action" will have a negligible impact on the surrounding properties, as the Restroom Improvements are no more intrusive than what was already considered by the Planning Department and the Planning Commission when SMA 401 was approved for Park purposes covering the adjacent Park parcels.

D. Description of impacts, which cannot be avoided, and mitigating measures proposed to minimize that impact.

There may be some short-term air quality impacts, soil particulates or fill exposed to impacts from wind and rain during the short-term grading and during the eventual construction of the Restroom Improvements, however, the Applicant will implement best management practices (BMPs) to minimize these impacts. Once construction is complete, the Applicant does not foresee any long-term impacts from these issues.

Most of the existing vegetation will be removed or displaced from the Property to construct the Restroom Improvements, but the Applicant does not anticipate that the removal of the vegetation will compromise the environmental resources of the immediate and surrounding area. The Applicant's landscaping plan intends to

reintroduce native and other coastal/salt tolerant vegetation, so there should be little impact caused by the removal of the existing vegetation in the long-term.

There may also be some short-term noise impacts during the construction phase of the Restroom Improvements, but since all of the properties surrounding the Property are vacant, Applicant does not foresee any significant short or long-term noise impacts on the environment or surrounding properties from the Proposed Action.

E. Alternatives to the Proposed Project.

The Proposed Action is not expected to cause any negative economic, social or environmental concerns, or cause adverse environmental impacts, as the Proposed Action will, (1) provide improved public shoreline access to the desirable "pocket beaches" within the State Parcel, new infrastructure and trail improvements, and safe access to recreational opportunities throughout the rest of the Park, all at no cost to the County of Hawaii, (2) provide opportunities to increase public awareness of the Park's natural, cultural and historic resources, and (3) provide a general increase in overall public enjoyment of the Park.

Under the "No Action" alternative, the Property would continue to remain "as is" in its present agricultural use, despite having none of the characteristics typically associated with viable agricultural land.

F. Any irreversible and irretrievable commitments of resources.

As with any development, the Project will result in commitment of land, capital, material, public services and utilities. The Applicant respectfully submits that there will be no irreversible or irretrievable commitment of resources from the Proposed Action since: (1) the beneficial use of the environment for recreational and access purposes to the coastline will not be curtailed by the construction of the Restroom Improvements, (2) public health will not be affected since noise and/or fugitive dust inconveniences will be mitigated by adherence to all Federal, State, and County environmental protection, health, safety, and construction rules and regulations, (3) public utilities are or will be available, and no additional burdens are anticipated, (4) there are no known rare, threatened, or endangered plant or animal species or habitats within the Property or immediate vicinity, (5) the preservation site within the Property is adequately protected pursuant to an approved SHPD AIS and BTP, (6) the construction of the Restroom Improvements does not involve a substantial degradation of environmental quality, (7) the construction of the Restroom Improvements will not cause a detrimental effect on the air or water quality or ambient noise levels.

V. A WRITTEN STATEMENT DISCUSSING THE PROPOSED DEVELOPMENT IN RELATIONSHIP TO THE OBJECTIVES AND POLICIES AS CONTAINED IN CHAPTER 205A, AND THE SMA GUIDELINES.

Chapter 205A, HRS, the Coastal Zone Management Act ("CZMA") for the State of Hawaii, seeks *"to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii"* by *"maintaining, restoring, and enhancing the overall quality of the coastal zone environment . . . its amenities and aesthetic values, and to provide adequate public access to public owned or used beaches, recreation area and national reserves"* by controlling development within an area along the shoreline, the County special management area. Although the Restroom Improvements involve land that is partially located within the County's SMA area, the Proposed Action fully supports and promotes the objectives and policies contained in HRS Chapter 205A by providing improvements that serve to enhance the benefits of open space and public access found within the Park. The Restroom Improvements have also been planned with the benefit of extensive environmental and archaeological studies in order to cause as little disruption to the existing environmental conditions and the preservation site found on the Property.

A. Recreational Resources.

The objective of the recreational resources policy is to provide coastal recreational opportunities accessible to the public. The Restroom Improvements will certainly increase the recreational value of the Park by providing users with upgraded restroom facilities comparable to newer restrooms facilities found at other public parks on the island. The subject improvements will also serve to further enhance public access to the desirable "pocket beaches" located in the State Parcel and the adjacent coastal areas for fishing and ocean viewing activities.

The Proposed Action will not reduce access to the coastline or other areas used for public recreational activities, and thus will not negatively impact public recreational resources.

B. Historic Resources.

The objective of the historic resources policy is to protect, preserve and where desirable, restore significant historic and prehistoric resources in the coastal zone management area.

As discussed previously in Section IV.A.6. above, the Applicant has expended a significant amount of time and money to date to document all the archaeological sites present within the Hokuli'a project, in addition to the Property. The Applicant has and will continue to fully implement all required SHPD approved mitigation and preservation requirements.

The Applicant's extensive archeological studies and plans also far exceed the requirements for this SMA Assessment Application request. Even in an SMA

Major Use Permit Application, the Planning Commission Rules 9-11(b)(5)(A), provide that only an archeological inventory report containing significance assessments, effect determinations, and proposed mitigation commitments would be required.⁶ As noted earlier, the SHPD approved the AIS covering the Property on January 22, 1997⁷. The BTP, which was prepared in compliance with HAR 13-300-38, was approved by the SHPD on April 22, 2004.

The Applicant has already erected a dry stack rock wall around a majority of Site No. 21813. The dry stack rock wall is located along the approved 20-ft wide preservation site setback buffer, pursuant to the requirements of the BTP. The Applicant intends to fully enclose the open portion of the rock wall along the 20-ft buffer that encroaches into the State Parcel, as soon as the BLNR approves the MOA and the proper authorizations are obtained from the State.

The Property is also not among those listed as historic properties in the Hawaii State Register of Historic Places, has not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan. Other than lineal descendant access to Site 21813, the Applicant is unaware of any other known traditional and customary native Hawaiian practices occurring within the Property that will be affected or impaired by the Restroom Improvements.

Furthermore, due to the limited nature of the Proposed Action, there will be no irrevocable commitments to the loss or destruction of any natural or cultural resources. Accordingly, the Applicant's Restroom Improvements do not conflict with the historic resources objectives and policies, which aim to protect, preserve and where desirable restore significant historic and prehistoric resources in the coastal zone management area.

The granting of the SMA Minor Use Permit will not involve an irrevocable commitment to loss or destruction of any natural or cultural resources.

C. Scenic and Open Space Resources.

The objective of the scenic and open space resources policy is to protect, preserve and restore or improve the quality of coastal scenic and open spaces resources.

The Proposed Action is supportive of this objective. The Restroom Improvements are intended to support the Park, which was developed to protect,

⁶ Planning Commission Rule 9-11(b)(5)(A) regarding an application for a Special Management Area Use Permit provides: *Archaeological Resources (one of the following): (A) An archeological inventory report containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) rules. (B) A "no effect" letter from the DLNR-SHPD. (C) A copy of letter written by the applicant to the DLNR-SHPD requesting a "no effect" letter, including supporting documentation, to which DLNR-SHPD has not responded after 30 days.*

⁷ Note that the acceptance of the AIS is not required by Planning Commission Rule 9-11, and thus Applicant has far exceeded the requirements for submission of this SMA Assessment Application.

maintain and improve the quality of coastal, scenic and open space resources in the area. The Applicant intends to use earth tones for all of the vertical Restroom Improvements to match the natural features of the land, which will minimize its visual intrusiveness. Therefore, the Proposed Action is not anticipated to significantly change the visual attributes of the existing area and is not likely to result in any substantial adverse impact on the surrounding environment. The proposed landscape improvements and low-scale character of the Restroom Improvements will also protect and enhance the area's open space and scenic resources. The Restroom Improvements are consistent with the policy of ensuring that developments are compatible with their visual environment, and will continue to foster the objectives and policies of the scenic and open space resources.

D. Coastal Ecosystems.

The objective of the coastal ecosystems policy is to protect valuable coastal ecosystems including reefs from disruption and minimizing adverse impacts on all coastal ecosystems, however, there are no coastal resources found within the Property. Nevertheless, to ensure that ground water and near-shore marine water quality is maintained, the Applicant will implement best management practices (BMPs) and observe standard engineering and design precautions based on Federal, State and County standards when developing the on-site drainage system. The Applicant will also take steps to minimize grading, as reasonably practical.

The construction of the Restroom Improvements will not involve any direct or chemical modifications to the near shore environment, nor is it likely to cause erosion and sedimentation seepage into the coastline. There should be no physical disruption of the existing habitat, and more important, no changes that would affect the amount of wave energy striking the shoreline by implementation of the Restroom Improvements.

Therefore, the Proposed Action is consistent with the coastal ecosystem objectives and policies, which aim to protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

E. Economic Uses.

The objective of the economic uses policy is to provide for public or private facilities or improvements important to the State's economy in suitable locations. The Property is in a suitable area to support the construction of the Restrooms Improvements due to close proximity to the Park. The Restroom Improvements are also minimally intrusive, which will help to mitigate the potential impacts of coastal development.

F. Coastal Hazards.

The objective of the coastal hazards policy is to reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsistence, and pollution. The shoreline is over 500 feet from the Property. The sea cliffs along the shoreline have remained stable during seasonal coastal storms.

The entire Property is also located within Zone X or outside the 500-year flood plain, so the Restroom Improvements will not be located in any flood hazard or drainage ways.

Although the Property is located in the County's Civil Defense evacuation area for hazards due to tsunami and possible surges from hurricanes, the Applicant will control or suspend public access during times of high wave action or tsunami danger to protect Park users from harm.

The Proposed Action is consistent with the coastal hazards objectives and policies, which provide for controls on development in areas subject to tsunami, flood, erosion and subsistence hazards.

VI. **ADDITIONAL INFORMATION**

A. **Consistency with the County General Plan and Zoning [HRS 205A-26(2)(C)]**

The County of Hawai'i's General Plan ("General Plan") is the policy document for the long range comprehensive development of the island of Hawai'i.

HRS §205A-26(2) provides: "*No development shall be approved unless the authority has first found: ... (C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required....*"

As noted above, the Property is County zoned Agricultural (A-1a).

"Land Use Agricultural" polices set forth in section 14.2.3 of the General Plan provide in pertinent part:

(d) Agricultural land may be used as one form of open space or as a green belt.

Additionally, "Environmental Quality" policies set forth in section 4.3 of the General Plan provides in pertinent part:

(a) Take positive action to further maintain the quality of the environment.

"Natural Beauty" polices set forth in section 7.3 of the General Plan provides in pertinent part:

(i) Do not allow incompatible construction in areas of natural beauty.

"Natural Resources and Shoreline" polices set forth in section 8.3 provide in pertinent part:

...

(c) *Maintain the shoreline for recreational, cultural, educational, and/or scientific uses in a manner that is protective of resources and is of the maximum benefit to the general public.*

(d) *Protect the shoreline from the encroachment of man-made improvements and structures....*

(t) *Preserve and protect significant lava tube caves.*

B. Compliance with the Public Trust

Article XI, section 1 of the Hawai`i State Constitution states: "*For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.*"

As set forth above, the Restroom Improvements are intended to enhance open space and public access uses within the Property and the adjoining Park parcels. The Applicant completed extensive archaeological work and has implemented the required preservation site buffers and almost the entire rock wall surrounding Site No. 21813, in addition to constructing a gate to allow access to lineal descendants. It is difficult to imagine a Proposed Action that would better serve the public trust principles that what is being currently proposed by this SMA Assessment Application.

C. *Ka Pa'akai O Ka 'Aina* discussion

Article XII, section 7, of the Hawai'i State Constitution requires the State and its political subdivisions to protect native Hawaiian traditional and customary rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n. 43, cert. denied, 517 U.S. 1163 (1996); *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000). Pursuant to the requirements of Hawaii Revised Statutes, Section 205A-4, and the Hawaii Supreme Court ruling in the *Ka Pa'akai O Ka 'Aina* case, the Planning Department is required to make specific findings and conclusions relating to the following:

- (1) *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;*

Discussion: Known traditional and customary native Hawaiian practices include access to the shoreline and ocean waters for fishing and gathering. The Applicant will recognize and allow any known traditional and cultural practices within the Property to continue, although none have been observed at this present time as occurring on the Property.

Access to the burial site found within the Property will continue to be allowed to lineal descendants, and the burial site will continue to be preserved and maintained pursuant to the terms of the SHPD-approved BTP.

Other than the cultural access rights relating to curation of the burial sites, the Applicant is unaware of any other valued traditional and customary native Hawaiian practices being exercised within the Property, currently.

The Property is also not among those listed as historic properties in the Hawaii State Register of Historic Places, has not been determined to be eligible for inclusion in the National Register of Historic Places, and is not profiled as a significant cultural and/or historic site in the General Plan.

The Applicant's Restroom Improvements should not affect or impair any valued cultural or natural resources, or the practice of any traditional or customary native Hawaiian rights.

(2) *The extent to which those resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the Proposed Action; and*

Discussion: The Proposed Action will not reduce, hinder or impose restrictions upon any cultural practices or public access to the shoreline within the SMA. The Proposed Action will not interfere with any existing public access to the shoreline. Therefore, no traditional or cultural resources and customary native Hawaiian rights will be affected or impaired by the Proposed Action.

(3) *The feasible action, if any, to be taken by the Planning Commission to reasonably protect native Hawaiian rights if they are found to exist.*

Discussion: Other than granting the Applicant's request, the only other feasible action to be taken by the Planning Department or Planning Commission is to require that if in the future, any valued, cultural, historical, natural resources and/or traditional and customary native Hawaiian rights are discovered in the Property, the Applicant will report the discovery to the SHPD for review and assessment.

D. Shoreline Certification Waiver

The Property is not located along the shoreline. The shoreline is approximately 500 feet from the Property and the shoreline is generally fixed, as the shoreline consists of rocky sea cliffs. For these reasons, the Applicant hereby makes its request for the Planning Director to waive the requirement for a certified shoreline.