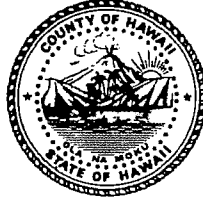


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

November 22, 2005

Mr. Michael Riehm
Riehm Owensby Planners Architects
P.O. Box 390747
Kailua-Kona, HI 96739

Dear Mr. Riehm:

PLANNED UNIT DEVELOPMENT APPLICATION (PUD 2005-000002)

Project Name: Ho'omau I Mua
Applicant & Consultant: Riehm Owensby Planners Architects
Petitioner: Donald S. Rullo
Tax Map Key: 8-7-013: 006

After reviewing the information submitted with the Planned Unit Development Application, the Planning Director hereby approves Planned Unit Development (PUD) No. 2005-000002 to allow the development of a 33-lot agricultural subdivision and related improvements within the Agricultural-5a (A-5a) zoned district pursuant to Hawaii County Code Chapter 25 (Zoning Code), article 6, division 1 (Planned Unit Development). Approval of PUD No. 2005-000002 includes the granting of Variances from various roadway standards of the Subdivision Code, Chapter 23 and minimum lot size, average width, and various yard setback requirements of the Zoning Code, Chapter 25, Hawaii County Code. The subject property is located at Opihihale, South Kona, Hawai'i approximately 9 miles south of the Honaunau City of Refuge National Park.

FINDINGS

1. Authorized Agent. Donald Rullo, fee simple landowner of the subject property, has authorized Riehm Owensby Planners Architects to apply, execute and process any and all applications and to participate in proceedings related to this application.
2. Project Description. The project is a 33-lot agricultural subdivision with lot sizes ranging from approximately 2.8 to 4.3 acres, with one large 44-acre lot. A private water system will provide potable and irrigation water. Roadways will be designed in a rural character. This

Hawaii County is an equal opportunity provider and employer.

NOV 23 2005

PUD enables the preservation of coastal open space by creating a large shoreline lot that extends greater than 1000' inland to the topographic knickpoint where the land starts to rise. To compensate for the large coastal open space, the site plan shows 32 developable lots smaller than the 5-acre minimum lot size. The site plan also includes public shoreline access easements and archaeological sites buffer easements (see Exhibit A).

3. Permitted Use and Density; Consistency with General Plan.

- a. State Land Use Districts. The site is in the State Land Use Agricultural district with Land Study Bureau agricultural suitability ratings of Class D and E. Hawaii Revised Statutes section 205-4.5 sets forth the permitted uses in the Agricultural district for Land Study Bureau Class A and B lands, while HRS section 205-2(d) sets forth the permitted uses in the Agricultural district for lands not in Class A or B. According to the PUD application, proposed uses include farm dwellings and agricultural activities. A condition of this PUD is the County's review of any CCR's to ensure that there are no restrictions on agricultural activities pursuant to Hawaii County Code section 25-5-72(f). The smallest proposed lot size (2.8 acres) exceeds the minimum 1-acre lot size in the State Land Use Agricultural district as required by HRS section 205-5(b).
- b. General Plan. The proposed farm dwellings and agricultural use are consistent with the General Plan LUPAG designation of Extensive Agricultural. The General Plan promotes public access to shoreline areas and protection of historic sites (General Plan, February 2005, section 8.3). Therefore, the conditions to this PUD require the provision of a mauka-makai and lateral public access through the subject property, and the depiction of archaeological buffer easements on the final plat map, as proposed in the PUD application and shown in Exhibit A.
- c. Zoning Code. The total land area of this PUD is 167.814 acres. The maximum density on this A-5a project site is 33 units (167÷5), which is the number of lots proposed. Pursuant to Hawaii County Code section 25-5-77(e), "Exceptions to the regulations for the A district regarding heights, building site areas, building site average widths and yards, may be approved by the director within a planned unit development."
- d. Conservation District. The shoreline portion of the site extending an average distance inland of 300' from the shoreline is within the Conservation District. This entire Conservation area is within the proposed 44-acre lot. Since there is no division of land within the Conservation district, the proposed subdivision does not trigger a Conservation District Use Permit application.
- e. SMA. The SMA boundary extends approximately an average distance of 200' further inland than the Conservation district boundary (total average distance of 500' from the shoreline). The entire SMA area is within the proposed 44-acre lot. Since there is no division of land within the SMA, the Planning Department issued a prior determination that the subdivision did not trigger a SMA permit (letter dated September 22, 2004).

4. Reasonable Project Time Period. According to the PUD application, the Applicant plans to start construction immediately upon receipt of final subdivision approval with an anticipated 8-month construction period.

5. Compatibility with Neighboring Uses. The neighboring parcels are vacant, similarly zoned, with lot sizes larger or comparable to the project's proposed lot sizes. The Applicant mailed a notice of this PUD application to property owners within 500' of the subject property. One letter was received, objecting to the application on the basis that the infrastructure of South Kona cannot support further growth.
6. Access. Access to the property is from Mamalahoa Highway, a State arterial, through an existing private road. The private road presently serves 7 existing lots between the subject property and the highway. A recorded Roadway Maintenance Agreement dated April 26, 2000 establishes the subject property's right to use and obligation to share in the maintenance of this road.
7. Previous Permits.
 - a. FINAL SUBDIVISION APPROVAL NO. 7235, approved on March 6, 2000, created 8 lots, one of which was the subject 168-acre lot. This subdivision also created the roadway lot providing access from Mamalahoa Highway to the mauka boundary of the subject lot. The subdivider completed the construction of the private roadway as a condition of receiving final subdivision approval.
 - b. VARIANCE NO. 417, approved on November 14, 1990, allowed the above-referenced 8-lot subdivision without providing a County-standard water system. In lieu of a water system, the variance allowed the proposed lots to be served by individual roof catchments. However, a condition of the variance required that "no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply." Applicant proposes to drill a well and provide a private water system. To meet DWS standards, this private water system must provide adequate pressure and volume under peak flow conditions, as well as a backup well of the same or greater capacity as the initial well (comment letter in file from the Department of Water Supply dated March 16, 2005).
 - c. SMA DETERMINATION LETTER SMAA 04-78, dated September 22, 2004, determined that if there is no division of land within the SMA, the subdivision is not a "development" within the meaning of the SMA rules, and therefore "further review of the project against the Special Management Area rules and regulations will not be required, . . ."

VARIANCES APPROVED

The master plan proposes a harmonious, integrated whole that justifies the following exceptions to the normal requirements of the Zoning and Subdivision Codes, subject to the conditions set forth at the end of this letter:

Zoning Code Variances:

1. Minimum Building Site Area (§25-4-31) (Variance Request #1-4). As represented in the master plan attached as Exhibit A, the minimum lot size shall be 2.8 acres. Pursuant to the Zoning Code section 25-5-77(a), "If any legal building site in the A district has an area of less than five acres, then the yard, minimum building site average width and height requirements for the building site shall be the same as the yard and height requirements in the FA district." Therefore, since all of the proposed developable lots will be less than 5 acres, the FA requirements apply. However, the only FA requirement that differs from the Agricultural district is the minimum building site average width, which is 120' for the first 1 acre plus 20' for each additional acre. The yard requirements (30' front and rear, 20' side) and height limits (35' residential, 45' non-residential) are the same for the A and FA districts.

Subdivision Code Variances

1. Lot Side Lines (§23-35) (Variance Request #5). Given that the layout of the internal roadway is based on the existed graded right-of-way (and not a straight road), this variance recognizes the preference to create rectangular lots as much as possible to maximize the usable area in lieu of shaping the side lot lines to be perpendicular or radial to the proposed road.
2. Intersection Angles; Corner Radius (§23-45) (Variance Request #7). Section 23-45(a) allows for a minimum intersection angle of 60 degrees. The PUD master plan does not show any intersection angle that would be less than that minimum. Therefore, no variance is granted for intersection angles. However, where the intersection is not 90 degrees, section 23-45(b) requires a minimum corner radius of 25 degrees. A variance is granted for this acute angle to be a minimum of 20 degrees along the right-of-way lines to slow down the turning movements, and in recognition of the anticipated low traffic volume.
3. Cul de sacs (§23-48) (Variance Request # 8). Section 23-48(a) specifies a maximum length of 600'. The master plan shows two cul de sacs. Given the large lot size, a variance is granted for the maximum length to be 900', including the drivecourt turnaround. Since section 23-48(b) gives the Planning Director the discretion to allow a T-turnaround or other suitable turnaround, this PUD hereby makes such determination that the proposed drivecourt is acceptable as proposed in Exhibit B since the dimensions meet the turning radius requirements of a fire truck.
4. Sidewalks (§23-89) (Variance Request #10). Section 23-89 does not require sidewalks, but vests the Planning Director with the discretion to recommend to the Council. This PUD hereby determines that sidewalks will not be required due to the anticipated low traffic volume and pedestrian traffic for this agricultural subdivision.
5. Street lights (§23-93) (Variance Request #11). The Subdivision Code requires the installation of street lights within the subdivision that meet County specifications. Since the

roads will be private, a variance is approved to allow custom street lights that meet professional engineering standards. Street lights are required; this variance relates to the type of street light fixtures.

6. Street Name and Traffic Signs (§23-94) (Variance Request #12). The Subdivision Code requires street and traffic signs to meet County specifications. Since the roads will be private, this variance approves custom street and traffic signs within the subdivision that meet professional engineering standards. Street name signs shall be erected at each intersection; this variance relates to the type of street sign fixtures.
7. Right-of-Way Improvement (§23-95) (Variance Request #13). The Subdivision Code requires the entire right-of-way to be improved. This variance allows the rights-of-way to be constructed with landscaped or unpaved shoulders and swales.

Although the petitioner requested the following variances, they are not necessary or not approved for the reasons given below:

- Minimum Right-of-Way and Pavement Widths (§23-41) (Variance Request #6). The internal street is a minor street. For a minor street in the agricultural district, section 23-41 specifies a 50' right-of-way with a 20' pavement width, which is what the Applicant proposes. Although the PUD application did not mention the pavement section design, section 23-87 provides for a nondedicable agricultural standard for lots in a zoning district of A-3a or larger: "six-inch minimum fine select borrow base course with surface treatment acceptable to the director of public works and director. Preparation of the surface, application of surface and utilization of equipment shall conform to standards adopted by and on file in the department of public works, subject to the condition that a portion of a roadway where the grade is eight percent or greater shall be built to paved requirements of this chapter." Therefore, where the grade is greater than 8%, the road shall conform with DPW's Standard Detail R-34; where less than 8%, the minimum standard shall be Standard Detail R-39.
- Grades and Curves (§23-50) (Variance Request #9). Section 23-50(a) specifies a maximum grade of 12% for a minor street. However, section 23-50(b) allows "variations from the required grades or curves . . . by the director and the director of public works where advisable to meet unusual conditions." The topography in this area provide a rationale to deviate from the 12% standard. Since the PUD application did not propose a maximum deviation from the grade or curves standards and it would not be appropriate to give an open-ended variance, such deviations can be reviewed and approved during the course of the subdivision construction plan review.

CONDITIONS

The Planning Director approves the Planned Unit Development subject to the following conditions:

- A. Approval and Conditions Run with the Land. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Indemnification. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
- C. Subdivision Approval. Subdivision approval shall be subject to the following conditions:
 1. Conformance with Master Plan. The final plat map shall show the lot layout, public access easement, and archeological sites buffer easements as substantially represented in the master plan attached as Exhibit A. The representation that the large shoreline lot will remain undeveloped and restricted from further subdivision shall be supported by appropriate notation on the plat maps and legal documentation.
 2. Non-Dedicable Private Streets. The streets shall be private, non-dedicable streets. The street layout shall include stubouts to the north and south for potential connectivity and alternative emergency access (in the event the single access road through the subdivision becomes impassable for any reason). The preliminary plat or final subdivision approval submittal shall include a recordable document similar to that required for nondedicable resort streets that includes the provisions set forth in section 23-70(4).
 3. Street Name, Traffic Signs and Markings, and Other Intersection Improvements. All streets within the proposed subdivision shall be named. Custom street light and sign fixtures shall be included in construction plans prepared by a professional engineer and submitted to the Department of Public Works for review.
 4. Review by the State Department of Transportation, State Historic Preservation Division, Na Ala Hele, Ala Kahakai. The Applicant shall provide sufficient number of copies of the preliminary plat (13 copies) to enable review of the preliminary plat by the State Department of Transportation (to determine whether any improvements are necessary to the intersection at Mamalahoa Highway due to the additional 33 lots), State Historic Preservation Division (to determine adequacy of the protection measures for the preserved archaeological sites), and the Na Ala Hele and Ala Kahakai programs (to assess shoreline access). The tentative approval will incorporate pertinent requirements from those agencies for Applicant's compliance.
 5. Compliance with Department of Water Supply Standards. The construction plans shall be submitted to the Department of Water Supply for review to determine whether the proposed system meets DWS' standards.

6. Construction Plan Review by Fire Department. Besides the Department of Public Works and Department of Water Supply, the construction plans shall also be submitted to the Fire Department for review.
 7. Public Access and Archaeological Sites Buffer Easements. The preliminary and final plat maps shall show easements for public access (mauka-makai and lateral) (as required by Hawaii County Code chapter 34 for subdivisions resulting in 6 or more lots) and archaeological buffers. The lateral public access shall reflect any agreements with the Na Ala Hele and/or Ala Kahakai programs, as applicable. The public access easement shall include an appropriate space for public parking. The subdivider shall submit a public access plan with the preliminary plat map to explain compliance with Hawaii County Code Chapter 34.
 8. Restrictive Covenants. As part of the submittal for final subdivision review, Applicant shall submit any draft restrictive covenants for the Planning Department's review to ensure there are no restrictions on agricultural activities and that there are proper disclosures that the lots are served by a private water system and private roads.
- D. Conditional Annual Report. If construction is not completed within three years from the date of this PUD approval, an annual progress report shall be submitted to the Planning Director prior to the fourth anniversary date of the Planned Unit Development (PUD) 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 final inspection approval of the required subdivision improvements by the pertinent agencies.
- E. Time Extension. The Zoning Code requires permit approvals to be used within two years (§25-2-7). This PUD shall be deemed "used" upon final subdivision approval. If the applicant should require an extension of time, the applicant may request for time extension pursuant to Section 25-6-14 (Time extensions and amendments).
- 11/22/2005

Mr. Michael Riehm
Riehm Owensby Planners Architects
Page 8
November 22, 2005

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate the nullification of the Planned Unit Development Permit.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

RT:pak/cd
P:\PUD Permits\2005\PUD-05-000002(Hoomau I Mua-Rhiem).doc

xc: Department of Public Works, Engineering (Hilo and Kona)
Department of Water Supply
West Hawaii Planning Office

Attached Exhibits:

Exhibit A: Master Plan

Exhibit B: Approved Drivecourt (Private, Nondedicable)

Exhibit A: Master Plan

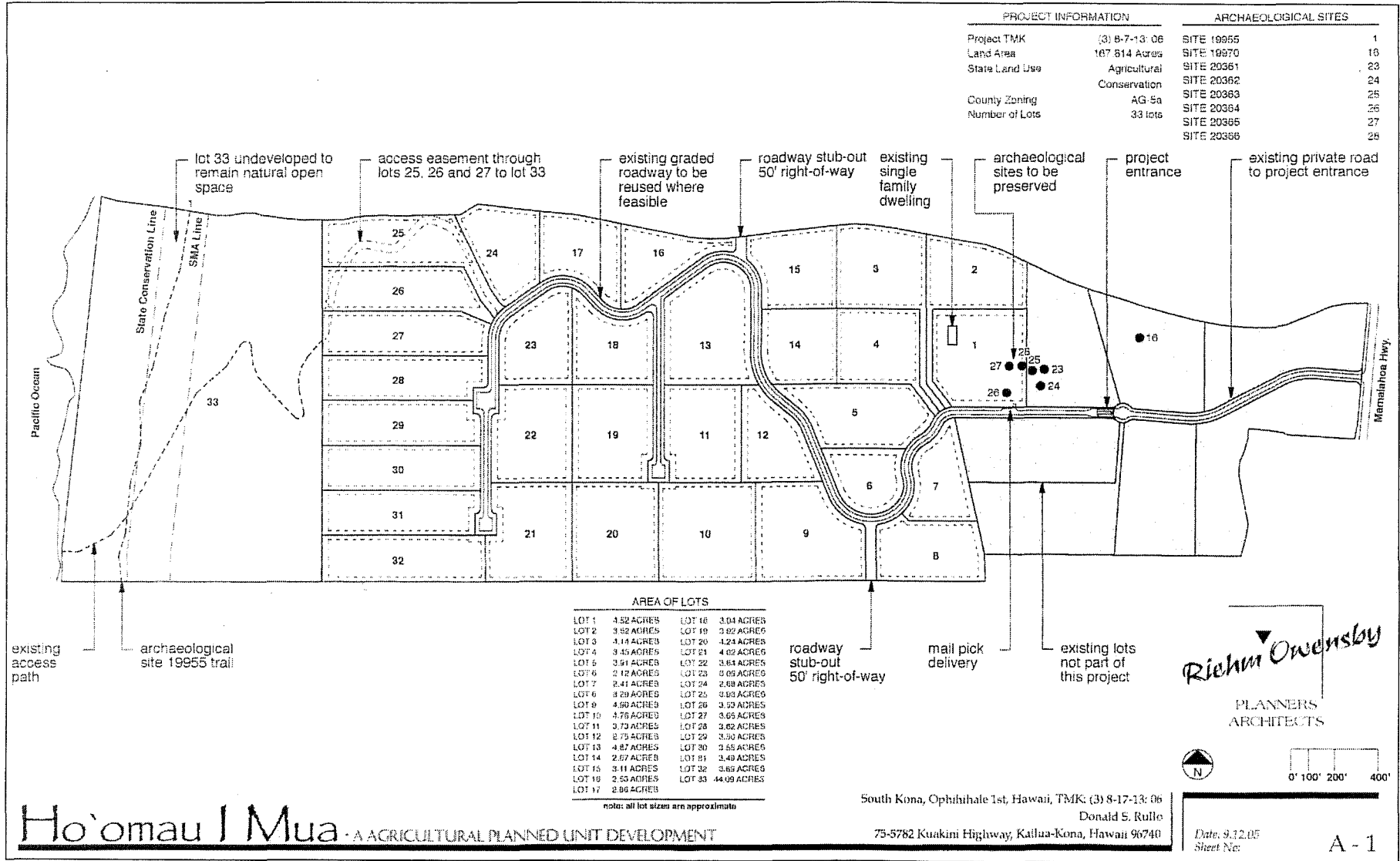


Exhibit B: Approved Drivecourt (Private, Non-Dedicable)

