County of Hawai'i

WINDWARD PLANNING COMMISSION

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AUG 15 2012

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Use Permit Application (USE 12-000034)
Applicant: Regency South, Inc.
Request: To Establish a 100-Bed Skilled Nursing/Intermediate Care Facility
Tax Map Key: 2-5-006:012, 2-5-007:001, 008, 046 and 047

The Windward Planning Commission, at its duly held public hearing on August 2, 2012, voted to approve the above-referenced request to allow the establishment of a 100-bed skilled nursing and rehabilitation center and related uses on 17.61 acres of land situated within the Single-Family Residential (RS-15 and RS-10) district. The property is located on the east (makai) side of Kaūmana Drive between 'Aipuni Street and Luana Way, Ponahawai, South Hilo, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Use Permit to allow the establishment and operation of a state of the art facility that will provide long-term care and rehabilitative services to the surrounding community. The center will consist of an approximately 48,000-square foot single-story, wood-framed structure situated on the makai portion of the property, downhill from Kaūmana Drive. The center will operate 24 hours a day, 7 days a week, with three shifts of skilled nursing staff on hand at all times. During normal business hours, the facility will also staff administrative, dietary, maintenance, and therapy departments. Approximately 145-150 permanent full-time employees are anticipated to work at the facility. The applicant expects to utilize about 5 acres of the 17.6-acre property for the facility including the nursing and rehabilitation center, a small maintenance and storage structure, driveways and parking. The remainder of the property will be reserved for potential future development including senior and long-term care uses.

Rule 7 (Use Permits), Section 7-6, of the Planning Commission's Rules of Practice and Procedure states that the Planning Commission may approve a Use Permit upon finding that:

a) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan;
b) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties; and
c) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

The proposed use is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan. The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the location and use of buildings, off-street parking, the percentage of a lot that may be occupied, and the density of population and land for trade, industry, residence or other purposes. The Zoning Code requires the issuance of a Use Permit for convalescent, nursing and care homes in the Single-Family Residential (RS) district. Use Permits are permits to allow uses in zoning districts which require special attention to insure that the uses will not unduly burden public agencies to provide public services or cause substantial adverse impacts upon the surrounding community.

The proposed use is consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for the property which is Low Density Urban. This designation allows residential (overall residential density may be up to six units per acre), with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The General Plan indicates that there will be a greater need for assisted living, skilled nursing, and intermediate care facilities in the various districts as the number of elderly resident's increases. Consequently, the Housing Element of the General Plan encourages the construction of specially designed facilities or communities for elderly persons needing institutional care and small home care units for active elderly persons. The proposed skilled nursing and rehabilitation center will fulfill this need in the community and therefore is consistent with the General Plan.

The proposed use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or to surrounding properties. The surrounding area is primarily residential in character. Lands to the north, west and south of the property are zoned RS-10 and consist of single-family

residential lots. The Luana Gardens subdivision, which consists of 17 lots, borders the southeast boundary of the property. Four of the lots in this subdivision are adjacent to the subject property. To the northeast are lands zoned A-1a that are vacant and overgrown. The Alenaio Stream is located just east of the property on State land that is zoned Open.

The property consists of five contiguous parcels totaling 17.61 acres in size situated downhill and makai of Kaūmana Drive. Due to the topography in this area, which slopes downhill approximately 80 feet from Kaūmana Drive to the Alenaio Stream along the eastern property boundary, several of the surrounding properties enjoy intermittent views of the coastline. However, these views are not likely to be impeded because the facility will sit below Kaūmana Drive and will be less than 30 feet in height, whereas the maximum building height permitted in the RS zoning district without a variance is 35 feet. The applicant will adhere to minimum yard requirements in the Zoning Code by situating any structures at least 15 feet from side property boundaries and 25 feet from the front and rear property boundaries. Additionally, landscaping will be installed to visually screen the facility from surrounding properties and reduce the affects of noise associated with the development.

The applicant held a community meeting on May 14, 2012 and follow-up meetings with property owners along Kaūmana Drive and within the adjacent Luana Gardens Subdivision to solicit input and create a mitigation plan to address potential project impacts on nearby residents. Concerns that neighbors identified included, but were not limited to, construction impacts including noise, dust and traffic; sight distance on Kaūmana Drive and at adjacent driveways; increased traffic; landscaping; drainage; wastewater treatment; solar energy facilities and future facility expansion plans. As a result of these meetings, the applicant has agreed to implement the mitigation program that is included in **P.D. Exhibit 15** (Background Report). The portions of the mitigation program that are under the County's purview to monitor and enforce are included as conditions of approval. With implementation of the conditions of approval, the proposed use is not likely to have a substantial adverse impact to the community's character or to surrounding properties and will not be detrimental to the public welfare.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, schools, police and fire protection and other related infrastructure. According to the Department of Water Supply a limited amount of water is available to the property at this time and improvements to the existing water system may be required in order to provide the amount of water needed for the proposed development based on the estimated water usage calculations submitted by the applicant's engineer. The applicant has indicated that they are amenable to providing these improvements should they be required by the Department of Water Supply. Access to the property is from Kaūmana Drive, a County roadway. The proposed access is located on a curve which limits visibility and sight distance for motorists traveling along

Kaūmana Drive. The applicant is proposing to widen and improve the existing access and install a left-turn lane and left-turn refuge on Kaūmana Drive to improve sight distance. The applicant will also install either multiple septic systems or a wastewater treatment plant to dispose of wastewater generated by the proposed development. Construction will not occur within the "AE" flood zone and all development-generated runoff will be disposed of on-site. All other utilities are available to the site. Police, fire and medical services are available nearby in Hilo.

The proposed use is not contrary to Chapter 205A, Hawai'i Revised Statues, relating to the Coastal Zone Management Area. The subject property is located over two miles from the shoreline and is not in the Special Management Area. Thus, the property will not be affected by coastal hazards and beach erosion. There are no identified recreational resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources on the subject property.

Because the property is undeveloped, in view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

- Investigation of valued resources: An Archaeological Inventory Survey of the property was conducted by Scientific Consultant Services, Inc. in December 2011 and a Flora and Fauna Survey of the property was conducted in April 2012 by Patrick Hart, Ph.D.
- The valued cultural, historical, and natural resources found on the property: The Archaeological Inventory Survey identified five sites that are associated with Historic to modern era rainwater drainage, property boundaries, a corral, and a poultry farm. The survey concluded that these sites were recorded in detail, thus requires no further work or preservation. Additionally, the survey concluded that none of the sites are associated with traditional Hawaiian subsistence or habitation activities. According to the Flora and Fauna Survey, no state or federally listed threatened or endangered plant or animal species were found on the property. There is no evidence that the flora or fauna in the area are particularly desired or used for cultural practices.
- Possible adverse effect or impairment of valued resources: Although the entire property was cleared and bulldozed prior to 1965 in association with the property being used as a dairy and poultry farm, it is possible that unidentified sites or remains exist. It is possible that endangered seabirds, such as the Hawaiian Petrel, fly over the property at night on their way to high elevation nesting areas and that the endangered Hawaiian Hoary Bat roosts in exotic and native woody vegetation

on the property. It is also quite likely that the property is used for foraging by the endangered Hawaiian Hawk.

- Feasible actions to protect native Hawaiian rights: To the extent which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD. To protect the endangered Hawaiian Hoary Bat and Hawaiian Hawk, the U.S. Fish and Wildlife Service has recommended no clearing or trimming of brush or trees during these species breeding and pup-rearing seasons, which extend from March through September 15.

Based on the above, the establishment of 100-bed skilled nursing and rehabilitation center and related uses on 17.61 acres of land situated within the Single-Family Residential (RS-15 and RS-10) zoned district is compatible with the existing land uses and the physical and social environment of the area, and promotes the effectiveness and objectives of the Zoning Code and General Plan.

Approval of the request is subject to the following conditions.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. Prior to submitting plans for Plan Approval review, the applicant shall secure Final Subdivision Approval for the consolidation of tax map key numbers 2-5-006:012, 2-5-007:001, 008, 046 and 047 into one 17.61-acre parcel.

3. Before a water commitment for the proposed development can be obtained, the applicant shall submit to the Department of Water Supply a conceptual water plan for the necessary offsite water system improvements which may include, but not be limited to, extending a water main from an existing 8-inch waterline from the intersection of Kaūmana Drive and Mohouli Street, approximately 1,730 feet to the property. Upon approval of the conceptual water plan and prior to Final Plan Approval, the required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy". The applicant shall construct all water system improvements as required by the Department of Water Supply and the Fire Department to meet the water and fire flow needs of the proposed development.

4. Prior to submittal of plans for Plan Approval, the applicant shall secure by public meeting, the input of the Luana Gardens Subdivision Community Association

(LGSCA) on matters such as the placement of all proposed structures, air conditioners and generators, wastewater system(s), paved driveway accesses, loading areas and parking stalls, and landscaping. In accordance with the Planning Department's Rule No. 17, landscaping shall be included on the plans to mitigate any potential adverse noise or visual impacts to adjacent properties, particularly along the common boundaries of properties within the Luana Gardens Subdivision. All buffer yard landscaping shall conform to the standards for separation of a residential (RS) zoning district from a commercial (CN) zoning district as provided for in Planning Department Rule No. 17. Landscaping between those properties and at least 20 feet within the subject site shall include the clearing of the existing underbrush and invasive trees and the retention of certain large trees to be determined by the LGSCA. As much as possible, landscaping shall include native or endemic plant material. A report of this meeting shall be submitted for the review and information of the Planning Director, with a copy to the LGSCA, along with plans submitted for Plan Approval review.

5. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to the commencement of construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code.

6. The applicant's contractor shall hold a community meeting at least 30 days prior to mobilization of any heavy equipment to the site to explain and discuss: the location and construction of the staging area and general site work for the proposed development, importation of fill, interim drainage controls, construction signage, timetable and hours of construction, and any other construction-related safety concerns. The Planning Department shall be notified of the meeting prior to it being held.

7. Access to Kaūmana Drive shall comply with Chapter 22, County Streets, of the Hawai'i County Code.

8. Prior to the start of construction of the vertical component of any structures on the property, the applicant shall install a dedicated left-turn lane on Kaūmana Drive for vehicles turning into the site, a left-turn refuge acceleration lane on Kaūmana Drive for vehicles turning out of the site, separate left- and right-turn exit lanes from the site's driveway, remove rock outcroppings, relocate retaining walls and widen pavement as shown on the plan entitled Conceptual Layout dated June 7, 2012. These improvements shall be implemented to maintain adequate sight distance at the site's driveway, adjacent driveways and along Kaūmana Drive, and

shall be constructed in a manner meeting with the requirements of the Department of Public Works.

9. The applicant shall be responsible for the design, purchase and installation of streetlights and traffic control devices (which may include, but not be limited to, smart signs) as may be required by the Traffic Division, Department of Public Works.

10. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.

11. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study, including proposed on-site drainage improvements which may include pervious or porous asphalt, shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. To reduce and better control or manage the sheet flow storm water passing through the subject property, the proposed on-site, sub-area(s) drainage improvements shall have a capacity equal to or greater than 110% of the calculated on-site development generated runoff and shall be directed to controlled points within the property and shall not change the location of their exit point(s). Further, a chain link or similar fence shall be constructed proximate to the floodway at the eastern end of the property and extending from TMK: 2-5-012:051 (lot 4) to the end of the improved section of the project. All required and approved drainage improvements, including the fence, shall be constructed in a manner meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

12. Prior to receipt of a Certificate of Occupancy, individual wastewater systems or a private wastewater treatment plant shall be installed meeting with the requirements of the Department of Health.

13. To protect the endangered Hawaiian hoary bat during breeding and pup-rearing season, woody vegetation greater than 15 feet in height shall not be removed or trimmed between June 1 and September 15 throughout the construction and ongoing operations of the proposed development.

14. To protect the endangered Hawaiian hawk during breeding season of March to September, prior to clearing vegetation during this period the applicant shall conduct surveys for nests and coordinate the protection of found nests with the U.S. Fish and Wildlife Service.

15. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD that sufficient mitigative measures have been taken.

16. Prior to the submittal of any plans for the 17.61-acre property, other than the 100-bed skilled nursing and rehabilitation center, the applicant shall notify and secure the input of the Luana Gardens Subdivision Community Association. Further, any such plans shall also include, if feasible, consideration for a secondary access other than Luana Way.

17. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall address in detail the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been satisfied.

18. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

19. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

    A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.

    B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

    C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate the revocation of the Use 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.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,

Zendo Kern, Chairman
Windward Planning Commission

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cc: Mr. Gregory Pyle, Regency South, Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division
DOT-Highways, Honolulu
DLNR-HPD
Mr. Gilbert Bailado