COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

PACIFICA BIG ISLAND, LLC
AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 286

Upon careful review of the applicant's request against the guidelines for approving amendments to a Special Management Area Use Permit, **the Planning Director is recommending that the request for a three-year time extension to secure Final Plan Approval be approved by the Planning Commission**. Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this position. This approval recommendation is based on the following findings:

The applicant is requesting to amend Condition No. 2 of SMA Permit No. 286 to allow for a three (3) year time extension to secure Final Plan Approval for the proposed multiple-family residential project. Condition No. 2 currently states, *"Final Plan Approval PLA-08-000376 issued on March 12, 2008 is null and void. Final Plan Approval for Phase II, covered by TMK: 7-8-010:078 and 090, consisting of no more than 184 units, shall be secured from the Planning Department within three years from the effective date of this amendment in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify proposed structure(s), access(es), fire protection measures, landscaping and security fencing for structures situated less than 75 feet from the Kaulana at Kona project identified by TMK: 7-8-010:092, and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona."*

The applicant currently plans to develop Phase II of the project within the next five years. Phase II consists of no more than 184 multiple-family housing units within two-and three-story structures on the subject properties (please note, the application inaccurately represents a remaining total of 198 units entitled). Additional improvements would include 414 parking stalls (10 of which would be handicapped stalls), an approximately 1,600 square foot clubhouse, swimming pool, and barbeque or gathering

area, landscaping, and on-site infrastructure to support the project (e.g., roadways and utility lines). Should the extension be granted, Condition No. 3 of the subject SMA Permit requires the applicant to commence construction within one year of securing Final Plan Approval and complete construction and be completed within five years thereafter.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options. The original application and amendments thereto were reviewed against the guidelines for granting of a Special Management Area Use Permit and were approved by the Planning Commission with conditions. The time extension request is reviewed by the following criteria:

A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, 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 and Zoning Code.

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

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. After acquiring the properties in 2014 and amending SMA Permit No. 286 in 2015, the applicant has worked diligently to develop the project. The applicant worked to address archaeological review of the subject properties, secured Final Plan Approval for a 32-unit multiple-family housing project on parcel 90 & the Common Area Clubhouse/Recreation Facility on parcel 78; however, after bids for the development proved too costly, the applicant spent additional time and money to re-think the technical design of the project (specifically grading and building placement) to reduce costs. Shortly after an administrative time extension to secure Final

Plan Approval was granted in 2018, the Kīlauea eruption suddenly and drastically impacted the housing and development market. Less than two years after the completion of the eruption and just as the financing market was beginning to recover, the COVID-19 pandemic hit resulting in nation and statewide shutdowns, uncertainty in financial markets and drastic increase in the cost of construction. Despite the preceding, the applicant is still committed to completing the project and wishes to retain the appropriate land use entitlement (in this case, the SMA Permit) that would enable it to construct the Phase II of the project, which would require the requested time extension.

Based on the preceding, the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants and that are not the result of their fault or negligence.

Granting of the time extension would not be contrary to the General Plan, Kona Community Development Plan or Zoning Code. Since the permit was amended in 2015, there has been no significant changes in the General Plan, Kona Community Development Plan or Zoning Code relative to the project area.

The General Plan designation for this area is Medium Density Urban, which allows for village and neighborhood commercial and single-family and multiple-family residential and related functions (multiple family residential -- up to 35 units per acre).

The General Plan articulates several goals, policies and actions around protecting valued archaeological, cultural, and historic resources on the island. These directives are particularly germane in the Special Management Area where the identification, assessment and protection of these resources are criteria for granting an SMA Permit.

According to SHPD records, in 1980 three historic sites consisting of a portion of a historic trail (SIHP 4619), an agricultural complex (SIHP 4633) and two small ahu (SIHP 4634), were previously documented within the project site. In January 2009, an archaeological assessment (AA) of parcel 78 was completed, however no traces of these sites were located during due to the extensive bulldozing of the property around 2004-05. In February 2014, a draft AA for parcel 90 was submitted to SHPD that also concluded that no historic sites were present on the property due to extensive bulldozing.

Condition No. 13 of the SMA permit required the applicant to consult with the State Na Ala Hele Trail Program and/or National Park Services' Ala Kahakai National Trails Program regarding the appropriateness of incorporating the remnants of a historic trail on the subject site and to provide a report of this consultation, including the incorporation of such a trail, if appropriate, to the Planning Department in conjunction with the Plan Approval process. By letter dated June 23, 2021, the applicant's representative provided the required report which outlined the consultation with Na Ala Hele and subsequent archaeological review on the location of trail segments in the project area and recommended treatment.

According to the report, the applicant did consult with Na Ala Hele who requested subsequent archaeological review be conducted to identify the location and significance of trail remnants in the project area. The applicant conducted subsequent studies which found that the trail never extended into parcel 90, however a portion of the trail once extended onto parcel 78 as identified in the 1980 AIS. That study also determined that the trail segment lacked significance as the alignment of the trail segment did not provide meaningful access for cultural practices on the landscape, thus no further work was recommended. SHPD accepted the AA in October 2015.

According to Na Ala Hele, although the trail has been destroyed on parcel 78, the underlying fee simple title of the trail section remains with the State of Hawai'i as unencumbered state land, and its use and disposition is subject to the approval of the Board of Land and Natural Resources (BLNR). As such, the Director is recommending updating Condition No. 13 to reflect the completion of the consultation and reporting requirement and to ensure that the location of the trail remnant is identified and depicted on any subsequent site plans to ensure that the land area is not used unless or until the applicant secures an easement from the State BLNR.

The property is zoned Multiple-Family Residential district, minimum land area of 3,000 square feet per unit (RM-3). RM-3 zoning would allow a maximum of 355 units on the combined 24.499-acre project site. The Kona Community Development Plan (CDP), adopted in 2008, designates the project area within the Kona Urban Area but outside of the Kahulu'u Makai Village Transit Oriented Development (TOD) area. Kamehameha III

Road and Ali'i Drive fronting the subject property are designated in the CDP as secondary transit routes.

Based on the preceding, the granting of the requested time extension would not be contrary to the objectives and policies of General Plan, the Kona CDP, or the Zoning Code.

The granting of the time extension would not be contrary to the original reasons for the granting of the permit. SMA Permit No. 286 was amended by the Planning Commission with conditions on March 6, 2015, based on the criteria for approving a Special Management Area Use Permit. The scope, design, layout, and phasing of the project approved by the Commission has not significantly changed since the permit was amended. Granting the time extension would simply provide the applicant additional time to develop the project. Thus, the time extension request is not contrary to the original reasons for granting the permit.

Based upon the preceding findings, the proposed amendment is consistent with the objectives and policies of Chapter 205A, HRS. The Planning Director recommends that the Planning Commission approve the applicant's three-year time extension request to secure Final Plan Approval. Approval of this amendment request is subject to the following conditions (material to be deleted is bracketed and struck-through; new material is underscored):

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Final Plan Approval PLA-08-000376 issued on March 12, 2008 is null and void. Final Plan Approval for Phase II, covered by TMK: 7-8-010:078 and 090, consisting of no more than 184 units, shall be secured from the Planning Department within three years from the effective date of this amendment in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify proposed structure(s), access(es), fire protection measures, landscaping and security fencing for structures situated less than 75 feet from the Kaulana at Kona project identified by TMK: 7-8-010:092, and parking areas. Further, the plans shall reflect the design principles for building and landscaping set forth in the Comprehensive Design Principles for Keauhou-Kona.

3. Construction, which includes site work, for Phase II shall commence within one year from the date of receipt of Final Plan Approval for [~~the revised~~] Phase II as described in Condition 2 and be completed within five years thereafter.

4. The applicant shall submit detailed water usage calculations for the Phase II development, prepared by a professional engineer licensed in the State of Hawai'i, to the Department of Water Supply within 180 days from the effective date of this amendment.

5. Access(es) to the proposed development shall meet with the approval of the Department of Public Works, provided however, that in no event shall the Phase II development take access to Kaluna Street through Phase I – Kaulana at Kona.

6. The applicant shall provide full improvements to the entire frontage along Kamehameha III Road and along the property's frontage with Ali'i Drive between Kamehameha III Road and Kaluna Street consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any relocation of utilities; meeting with the approval of the Department of Public Works prior to issuance of the certificate of occupancy for the proposed units. Install street lights, signs and markings meeting with the approval of the Department of Public Works, Traffic Division. The applicant shall construct all improvements to dedicable standards and dedicate to the County. Said improvements may be deferred until required by the Department of Public Works; provided, however, that a bond or equivalent surety to assure its construction shall be posted with the County.

7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.

8. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. The drainage improvements shall be constructed, meeting with the approval of the Department of Public Works, prior to receipt of a Certificate of Occupancy.

9. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.

10. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with Department of

Health regulations and construction industry standards and practices utilized during construction projects of the State of Hawai'i.

11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.

12. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.

13. [~~The applicant shall consult with the staff of the State's Na Ala Hele Trail Program and/or National Park Services' Ala Kahakai National Trails Program regarding the appropriateness of incorporating the remnants of a historic trail on the subject site and shall provide a report of this consultation, including the incorporation of such a trail, if appropriate, to the Planning Department in conjunction with the Plan Approval process.~~] The applicant shall determine the metes and bounds location of the destroyed trail segment (SIHP 4619) on TMK: 7-8-010:078 identified by the Hammatt and Folk (1980) Archaeological Inventory Survey and depict the location on any site plans for Final Plan Approval and subsequent development permits. The applicant shall keep this area free of all structures and improvements until such time as an easement is secured from the State Board of Land and Natural Resources for any proposed use of that land area.

14. [~~Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the affected area shall cease and the DLNR- State Historic Preservation Division immediately notified. Subsequent work within the affected area shall not proceed until clearance is obtained from the DLNR- State Historic Preservation Division.~~] In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

15. All buildings shall be setback a sufficient distance from the property line fronting Kamehameha III Road so that the buildings do not substantially interfere with or detract from the line of sight toward the sea from the road. The applicant shall provide photo simulations and a view plane analysis with plans for Final Plan Approval showing view planes towards the sea from the road, particularly looking south and southwest, with the proposed buildings.

16. Unless a lesser setback is approved by the Planning Director, all proposed buildings and activity areas (i.e. swimming pools, tennis courts, etc.) shall observe a minimum setback of 200 feet from the center line from the golf course fairway. If deemed necessary, additional setbacks or other mitigating measures, such as additional landscaping along certain portions of the golf course boundaries, may be imposed at the time of [plan approval] Plan Approval review.

17. The highest point of any building that is constructed in the area designated as Area "A" on the diagram, which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall not exceed the elevation above mean sea level of the finished ground floor level of Building 1 of the Kaulana at Kona, Phase I, which building is located as shown on the attached Exhibit "A". The highest point of any building that is constructed in the area designated as Area "B" on the diagram, which is attached hereto as Exhibit "A" and incorporated by this reference, shall not exceed the elevation above mean sea level of the finished floor for the pool deck area of the Kaulana at Kona, Phase I which pool deck is located as shown on the attached Exhibit "A".

18. Comply with all other applicable County, State and Federal laws, rules, regulations and requirements.

19. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this amendment. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

~~20.~~ [~~An initial extension of time for the performance of conditions within this amended permit may be granted by the Planning Director upon the following circumstances:~~

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

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

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

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

If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.