



KILAUEA NEIGHBORHOOD ASSOCIATION

Mr. Wayne Kateyama, Chair
Kauai Planning Commission
4444 Rice Street, Suite 140
Lihue, HI 96766

President:

Yoshito L'Hote

Vice President:

Alvin Castelo

Secretary:

Thomas Pickett

Treasurer:

Gary Pacheco

Sergeant-at-arms

Scott Mijares

PTSA Rep.

Susan Keller

Directors:

Mike Latif

Beryl Blaich

Bill Troutman

Tim Kalai

Ken Carlson

Charlie Martin

Carrie Souza

Jim Spencer

Ron Paul

Re: Charles Somers and West Sunset 32 Phase 1, LLC

Special Management Area Use Permit No. SMA(U)-2008-5, Use Permit (U-2008-4),
Class IV Zoning Permit (Z-IV-2008-6)

Dear Chairman Kateyama and Members of the Kauai Planning Commission;

The Board of the Kilauea Neighborhood Association (KNA) is unanimously opposed to this application. We are opposed for the reasons listed below:

First, speaking as president of the KNA, we are embarrassed that we were unable to follow through with the contested case intervention. The lawyer who could have made this case was not available. The funding for proper legal representation was prohibitive.

The history of this place at Kahili that Mr. Somers and West Sunset 32 Phase 1, LLC bought saddens us. We thought, because of federal action, including approval of President Bush in 2004, that the 161 acre parcel was going to be part of the Fish and Wildlife Refuge to be preserved in a pristine state for all of us, forever. It was, in our minds, a community achievement.

When Mr. Somers and Sunset LLC acquired the property at the last minute, the community was shocked. When he proposed his house, manager's house and barn, the community joined the intervention of neighbor Elizabeth Freeman to express and protect the conservation and cultural values that the SMA and the Special Treatment District acknowledge and supposedly perpetuate.

In the preliminary Findings of Law Decision and Orders, the Planning Commission acknowledged the "obscene" size of the "main" farm dwelling house and initially determined that the manager's house and barn were excessive.

At the conclusion of the 2008 contested case we thought that we had to accept the home in exchange for denial of the manager's house and barn as well as the extinguishing of allowable units on the 80 acres through the conservation easement.

Post Office Box 328, Kilauea, Kauai, Hawaii 96754
<http://kna-kauai.org> . Email: joekilauea@gmail.com
<http://facebook.com/kna.kauai>

KILAUEA NEIGHBORHOOD ASSOCIATION

We also had faith in the good judgment of Mr. Somers and West Sunset 32 Phase 1, LLC to negotiate managed, even limited, access to the waterfall.

The KNA was entirely stunned by the current application.

In short, we perceived this outcome as the compromise: Mr. Somer's got his house; the community got fewer structures. To have the manager's house and barn be submitted again demonstrates for us the irrelevance of community concerns and action.

Our specific concerns about this new application follow:

1. In September 2008, in order to receive permits for his unusually large farm dwelling which is located in the SMA and County's Special Treatment District, Charles Somers and West Sunset 32 Phase 1, LLC voluntarily gave up a manager's house and barn.
2. Mr. Somers and West Sunset 32 Phase 1, LLC are applying for a nearly 3000 square foot "conservation managers house" and a "conservation maintenance barn" of 2592 square feet. However, Mr. Somers has no conservation management plan and has not conducted any conservation activity.
3. The actual purposes of these structures seem to be security and storage of recreational equipment. Security has already been active for five years without additional structures.
4. The 2008 Decision and Orders placed 18 conditions on the project. Some conditions for the first permit have not been tested. Other conditions have not been completed.
 - a. Condition three required complete construction within 5 years from the date of approval or October 2, 2013. At that date the home had not been occupied and had not have been completed.
 - b. Even before the main house was done, Mr. Somers and West Sunset 32 Phase 1, LLC applied for the additional structures. His rationale appears to be solely that it made sense to continue construction while it was still occurring under the first permits. The applicant's convenience does not override the need to complete the conditions of the permit.
 - c. Among conditions for the first permit are several that were meant to protect the exceptional natural resources of the Kilauea River basin including minimal use of pesticides, herbicides and non-organic fertilizers, shielding of external lighting and reduction of the proposed grading area and volume. Because the home has not been occupied – even occasionally - we do not know whether these mitigation measures, imposed for one structure, are working as intended. Therefore, it is premature to add additional structures.
 - d. Condition 11.d. i. requires that "prior to recording the conservation easement, it shall be submitted to the Planning Department to review its compliance with this condition. The Planning Department shall solicit comments from the US Fish and Wildlife Service."

There is no apparent record of consultation with the United States Fish and Wildlife Service by the Planning Department. In the FWS system, only qualified individuals within the Ecological Services unit in Honolulu can assess a conservation easement. There is no record of such consultation.

KILAUEA NEIGHBORHOOD ASSOCIATION

- e. Condition 12 states that Mr. Somers and West Sunset Phase 1 LLC shall improve the entire length of Kahili Quarry Rd. That improvement has not been completed.
- f. Condition 18 allowed access to the waterfall at the Somers and West Sunset 32 Phase 1, LLC 's discretion. Public access to the upper river and Kilauea Falls has been almost completely denied for the last five years. Now, the Planning Commission has the opportunity the rectify this.
5. How can this application be considered when some conditions are not tested; some need clarification and some conditions are not fulfilled? With the completion of these obligations, these additional buildings could be warranted in the future.
6. The proposed "maintenance" buildings are larger than used by other Kaua`i conservation projects.
7. Charles Somers and West Sunset Phase I LLC residence is a "farm dwelling." This farm dwelling does not have any agricultural component. When the main house farm dwelling was permitted, an agro-forestry project was part of the application. What has happened to the agro-forestry project?
8. Condition 13 prohibits use for "vacation rental or bed and breakfast purposes." That restriction does not prohibit a corporate retreat with staff and recreational amenities.
9. The conservation easement itself raises many questions.

In summary, we are against permitting these structures at this time. Just as Mr. Somer's "farm dwelling" does not house a farm family, the conservation manager's house and conservation maintenance barn are not for conservation use.

Additional structures for a manager and equipment could be permitted when there is an actual conservation plan including specific objectives and measurable indicators, maps, methods of habitat conservation, enhancement or restoration, the number and qualifications of personnel and the equipment required for the work.

Please do not approve these permits.
Thank you for you work.

Respectfully,

Yoshi L`Hote
President