



## KILAUEA NEIGHBORHOOD ASSOCIATION

Sean Mahoney, Chair  
Kauai Planning Commission  
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Lihue, HI 96766

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Aloha Mr. Mahoney,

RE: Amendment to Special Management Area Use Permit SMA (U)-2008-5, Use Permit U-2008-4, and Class IV Zoning Permit Z-IV-2008-6, in conjunction with Status Report in the matter of Charles Somers, as Trustee of the Charles Somers Living Trust dated November 12, 2002, and West Sunset 32 Phase 1  
TMK (4) 5-2-012:035

April 26, 2016

Dear Chairman Mahoney and Members of the Kaua'i County Planning Commission.

Thank you for the opportunity to submit the following observations and suggestions about this application for a 2,270 sq. ft. "Conservation Manager's House" and the 4023 sq. ft. "Conservation Maintenance Building."

The Kilauea community regards the Kilauea River Valley as the special geographic heart of our region, special in natural, native Hawaiian, cultural and recreational significance. The Kilauea Neighborhood Association (KNA) has been involved in planning to protect this area for three decades and has definitely participated in review of proposals for this property.

### Summary

The KNA supports the recommendations of the Director's Report Supplement #7, particularly the rental use restriction, the requirement to do agriculture and the requirement that all the previous conditions imposed in conjunction with the SMA and use permits for the main house be completed before building permits are granted for the additional structures.

Because the small acreage and minimal scope of conservation management, we ask that square footage of the barn be reduced by 1000 sq feet. (4000 to 3000) We ask for two additional amendments to the 2008 Decisions and Orders pertaining to public access.

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### The Planning Director's Recommendations

If this application is approved, it is critical that the following recommendations of the Planning Director's Report Supplement #7 (March 2, 2016) be adopted:

#### A-9 No vacation rental use

"The applicant shall not use this residence for vacation rental purposes. This restrict shall be incorporated into the deed restrictions on the subject parcel...."

#### A-10 Agriculture is required

"Applicant is on notice that the property is "Agricultural" under State Land Use designations. Notwithstanding the Applicant's previous submittal of a farm plan at the initial submittal in 2008, and the subsequent adjudication leading the designation of the area planned for farming to be placed instead in a conservation easement for preservation purposes, Applicant must comply with all requirements pursuant to Hawaii Revised Statutes Chapter 205."

#### A-13 No Building permits granted until previous conditions are complied with.

"The applicant shall comply with the previously approved conditions for Special Management Area Use Permit SA (U)-2008-5 prior to the issuance of building permits for the residence and maintenance building. The applicant shall apply for the building permit within one year of the date of the approval of this application and complete the proposed development within two (2) years of the date of approval of the building permit."

Condition #12 of SMA Use Permit 2008-5 is particularly important to the Kilauea community. Condition #12 states in part: Applicant shall provide roadway improvements to the entire length of Kahili Quarry Road as may be authorized by present owners. Said roadway improvements should include clearing and drainage improvements as may be permitted by the present road right-of-way width. ..."

While the KNA is highly gratified that Mr. Somers, the Fish and Wildlife Service and the County are starting to work together to accomplish this condition, road improvements must be completed before any new structures are constructed.

Please note that Condition A-13 also requires that the preservation of the archaeological sites must be completed before building permits are issued.

#### Limited Conservation Plan

The two conservation easements on the 161 acre property cover 149 acres. Among important values and resources of the area identified in the conservation easement documents are: wetland habitat for endangered koea duck, stilt and coot, nene and sea bird habitat, archaeology, agriculture and scenic resources. The easements also state that "the owner has the right – but not the obligation - to conduct land management and/or environmental restoration activities within the easement areas ... including "but not limited to removal of alien species, restoration of wildlife habitat, restoration of wetlands and introduction of native species."

At the previous application for these buildings in January 2014, the KNA was gratified that the Planning Commission required Mr. Somers to develop a Conservation Plan in order to demonstrate the need and uses for the conservation manager's house and conservation maintenance barn.

The Conservation Plan, which was submitted to the Planning Commission in January, 2016, is, disappointingly, limited in both the size of acreage to be managed and the scope of resources that will be managed. The conservation plan covers about 20 acres or about 13% of the easement acreage. The Conservation Plan focuses only on archaeology and on protection of a sole endangered species, the nene goose.

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The 16.2 acre archaeological preserve will consist of 57 sites and a buffer area from which disruptive vegetation will be removed. Whether or not the applicant had chosen to establish conservation easements, these sites were required to be protected. "Protection and preservation of archaeological resources present at Kilauea Falls Ranch is a condition of its present Special Management Area Permit (SA (U)-2008-4]." (Kilauea Falls Ranch Conservation Plan Section 3, pg. 3-1)

Two percent or about 4 acres of the 149 acres under conservation easement will consist of a nene goose enclosure, which will protect this free-ranging species during nesting and fledging should nene, already abundant on the property, determine to nest there.

Because of the limited acreage and scope of conservation management activities, the KNA questions the size of the conservation barn. Presently, the equipment used to manage the property is kept in an 1800 sq. ft. tent. Even with large mowers, trucks, backhoe, ATVs and Mules to get around the property, plus a bathroom, the conservation barn seems over-sized. The conservation plan states that for vegetation management in the archaeological preserve "allowable hand tools include but are not limited to machetes, chain saws, weed eaters and clippers."

Access Update and request to add three conditions

There is a public easement (P-1) on Mr. Somers' property along the western riverbank. The nene enclosure will be located in this vicinity and should be placed substantially distant from this public easement.

The Open Space Commission has asked the County to survey the P-1 easement. That has not occurred. Vegetation will need to be cleared where the easement intersects Rock Quarry Rd. It would make sense for that clearing to occur as the work for grading, grubbing and improving to the Rock Quarry Road into Federal Wildlife Refuge occurs. If this application is permitted, a condition requiring the applicant to assist with this clearing work should be added.

The name Mr. Somers' has chosen for his property, Kilauea Falls Ranch, spotlights the community's loss of experiencing this exceptional natural feature which people use to access either by walking a well-used trail on the applicant's parcel or boating up the river and walking the last part of the trail.

The Planning Commission's 2008 Decision and Orders stated that public access to the falls is at the discretion of Mr. Somers. The community has continued to hope that limited and managed access to the falls be provided. To that end, KNA board members did approach Mr. Somers through his attorney, Mr. Graham, to propose a trial program of limited, managed access in 2015. (See attached) Mr. Somers' was not interested in the proposal, but Mr. Graham did state that people could call him to request access to the falls.

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An on-site conservation manager could supervise limited access to view the falls. The KNA asks for a condition stating that the manager would have the discretion to grant, manage public access to the falls and to the archaeological preserve and/or to negotiate with representatives of the public interest (including the KNA and the Open Space Commission) along with Mr. Somers' attorney, to terms for limited for public access.

Finally, the KNA wants to publicly acknowledge the monetary assistance Mr. Somers has given to the development of the County owned/ community managed Kilauea Agricultural Park. We are most grateful for his neighborliness and involvement.

Thank you for your time and attention.

Respectfully and with aloha,

Yoshito L'Hote  
President