March 16, 2009

Ms. Katherine Kealoha, Director
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

Dear Ms. Kealoha:

SUBJECT: FINAL ENVIRONMENTAL ASSESSMENT (FEA) FOR THE NONA LANI COTTAGES LOCATED AT 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII; TMK: (2) 3-9-041:001 (CPA 2006/0001) (CIZ 2006/0001) (EA 2006/0002)

The Maui Planning Commission, at its regular meeting on February 24, 2009, accepted the Final Environmental Assessment (FEA) for the subject project, and issued a Finding of No Significant Impact (FONSI). Please publish the FEA in the April 8, 2009, Office of Environmental Quality Control (OEQC) Environmental Notice.

We have attached a completed OEQC Publication Form, two (2) hardcopies of the FEA and one (1) CD containing the PDF file of the FEA. An electronic file of the Project Summary will be emailed to your office separately.

Thank you for your cooperation. If you have any questions, please contact Staff Planner Jeffrey Dack by email at jeffrey.dack@mauicounty.gov or by phone at 270-6275.

Sincerely,

CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

For: JEFFREY S. HUNT, AICP
Planning Director

Attachments
xc: Jeffrey P. Dack, AICP, Staff Planner
Raymond Cabebe, Chris Hart & Partners, Inc.
EA Project File (w/ copy of attachment)
General File

JSH:CIY:JPD:vb
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FINAL
HRS CHAPTER 343
ENVIRONMENTAL ASSESSMENT

NONA LANI COTTAGES

455 · South · Kihei · Road
Kihei · Maui · Hawaii
TMK: (2) 3-9-041:001

Prepared for:
Nona Lani Cottages, LLC
P.O. Box 655
Kihei, Hawaii 96753

Prepared by:
Chris Hart and Partners
Landscape Architecture and Planning
115 North Market Street
Wailuku, Hawaii 96793
Phone: 242-1955
Fax: 242-1956

JUNE 2008
Revised November 2008
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I. PROJECT INFORMATION

A. PREFACE

This Community Plan Amendment (CPA) and County Change in Zoning (CIZ) application has been filed on behalf of Nona Lani LLC, the owners of a parcel identified as Tax Map Key 3-9-041:001, Kihei, Maui, Hawaii. The Kong family lives on the property and has owned it for 62 years. The family has operated Nona Lani Cottages LLC with twelve (12) transient vacation rental units since 1972.

B. PURPOSE OF THE REQUEST

The intent of the owners is to establish consistency between the County’s Kihei-Makena Community Plan and County zoning land use designations and the current vacation rental use. This Final Environmental Assessment (EA) has been prepared to describe and analyze the impacts associated with this action and is required since the applicant will seek to amend the Kihei-Makena Community Plan to change the designation of the subject property from MF Multi Family to H Hotel. This Final EA has been prepared in compliance with Chapter 343, Hawaii Revised Statutes (HRS), Section 5-6, which states that an Environmental Assessment (EA) shall be required for actions which propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county; and Chapter 200, Hawaii Administrative Rules, Environmental Impact Statement Rules.

The owners are also seeking a County Change In Zoning (CIZ) designation from R-2 Residential to H-1 Hotel District. (Note: The immediately adjacent parcels to the south have been zoned H-1 Hotel District since 1969.)

The Kong family will continue the transient vacation rental use as established over the last 36 years. The family does not intend to pursue any additional development on the subject property at this time, however the proposed entitlement action will establish consistency and will allow flexibility for any future improvements. (Note: Any future
development plans will be the subject of a Special Management Area (SMA) use permit application process.)

C. PROJECT PROFILE

Proposed Project: Community Plan Amendment and County Rezoning
Lot Size: 2.27 acres
Existing Land Use: Transient vacation rental cottages
455 South Kihei Road
Address: Kihei, Maui, Hawaii
Access: South Kihei Road
Tax Map Key: (2) 3-9-041:001

D. IDENTIFICATION OF THE APPLICANT

Land Owners: Nona Lani Cottages LLC
Address: P.O. Box 655
        Kihei, Hawaii 96753
Phone: (808) 870-9100
       (808) 879-2497
Contact: Ms. Cherlyn J. Kong

E. ACCEPTING AGENCY

Name: Maui Planning Commission
c/o Department of Planning, County of Maui
Address: 250 South High Street
        Wailuku, Hawaii 96793
Phone/Fax: Phone: (808) 270-7735
       Fax: (808) 270-7969
Contact: Mr. Jeffrey S. Hunt

F. CONSULTANT

Land Use Planners: Chris Hart & Partners, Inc.
1955 Main Street, Suite 200
Wailuku, Maui, Hawaii 96793-1706
Phone/Fax: Phone: 808-242-1955
       Fax: 808-242-1956
G. MAJOR LAND USE, DEVELOPMENT AND CONSTRUCTION APPROVALS

1. Community Plan Amendment that includes a Public Hearing, Recommendation by the Maui Planning Commission, and Approval by the Maui County Council.

2. Change in Zoning that includes a Public Hearing, Recommendation by the Maui Planning Commission and Approval by the Maui County Council.

**NOTE:** The Department of Planning initially disagreed that the Nona Lani Cottages is an existing nonconforming use and, therefore disagreed that the project is limited to these approvals *(See:* Appendix “E”, letter dated 10/18/07). Planning has since reversed its opinion and considers the cottages an existing nonconforming use *(See:* Appendix “E”, letter dated 3/6/08).

No improvements to the subject property are proposed at this time. Any improvements or new development on the property may be subject to the following approvals:

1. Special Management Area (SMA) Use Permit that includes a Public Hearing and Approval by the Maui Planning Commission.

2. Grading/Grubbing Permit approval from the Department of Public Works (DPW), County of Maui.

3. Building, Electrical and Plumbing Permits for structures from the DPW.

4. Special Flood Hazard Area Development Permit from the Department of Planning.

H. PRE-CONSULTED AGENCIES & PRIVATE INTERESTS

A. COUNTY OF MAUI

1. Department of Planning

I. CONSULTED AGENCIES & PRIVATE INTERESTS

The Maui Planning Commission reviewed and commented on the Draft Environmental Assessment for the Nona Lani Cottages at its April 22, 2008 regular meeting. The Draft
Environmental Assessment for the Nona Lani Cottages was published on December 23, 2007 by the State Office of Environmental Quality Control (OEQC) in its Environmental Notice bulletin. The publication initiated a 30-day public review period ending on January 22, 2008. The Draft EA was mailed to agencies below. All comment letters and responses are found in Appendix “F”, unless noted otherwise.

A. COUNTY OF MAUI

1. Civil Defense (did not respond)

2. Corporation Counsel (did not respond)

3. Department of Environmental Management

4. Department of Housing and Human Concerns (did not respond)

5. Department of Parks & Recreation

6. Department of Planning

7. Department of Public Works

8. Fire Department
   a. Capt. Val Martin verbally responded by phone. He commented that existing fire protection appears to be adequate and in compliance. The department will comment on the CIZ and CPA applications.

9. Police Department

B. STATE OF HAWAII

1. Department of Land and Natural Resources – Aquatic Resources (did not respond)

2. Department of Land and Natural Resources – Commission on Water Resource Management

3. Department of Land and Natural Resources – Engineering

4. Department of Land and Natural Resources – Land

5. Department of Land and Natural Resources – Office of Conservation & Coastal Lands (did not respond)
II. DESCRIPTION OF THE PROPERTY AND PROPOSED ACTION

A. PROPERTY LOCATION

The subject property is located in north Kihei, on South Kihei Road between Ohukai Road and Kaonoulu Road, Kihei, Maui, Hawaii; TMK: (2) 3-9-041:001. (See: Figure No. 1 “Regional Location”, No. 2 “Tax Map Key”, & No. 3 “Aerial Map”).

B. EXISTING LAND USE

The subject 2.27 acre parcel contains ten (10) structures (See: Appendix “D”). The original 5,147 square foot dwelling has been renovated and consists of a residence and four (4) units and eight (8) 396 square foot one-bedroom cottages (See: Figure No. 4, “Typical Cottage Floor Plan”). The remaining structures on the property consist of a small laundry facility, two small storage sheds and a gazebo. The parcel has been owned by the Kong family since 1944. The Nona Lani Cottages LLC, with twelve (12) transient vacation rental units, has been operated by the family since 1972.

C. LAND USE DESIGNATIONS

State Land Use Classification: Urban
(See: Figure No. 5, “State Land Use”)
Kihei-Makena Community Plan: MF Multi-Family
(See: Figure No. 6, “Community Plan Map”)
County Zoning: R-2 Residential District
(See: Figure No. 7, “Zoning Map”)
Flood Zone Designation: A4
(See: Figure No. 8, “Flood Zone Map”)
Special Designations: Special Management Area
D. DESCRIPTION OF PROPOSED ACTION

The Applicant is requesting a Community Plan Amendment from MF Multi-Family to Hotel and a Change in County Zoning from R-2 Residential to H-1 Hotel for parcel number TMK (2) 3-9-041:001. No additional development is proposed at this time.

The Kong family has used the parcel to operate **Nona Lani Cottages LLC** with twelve (12) transient vacation rental units since 1972. The 12-unit density is consistent with the allowable density in the R-2 Residential District and concerns for transient versus long-term rental were not well defined in 1972, the early years of Maui’s visitor industry development. The 1985 update of the Kihei-Makena Community Plan changed the land use designation of the subject parcel to MF Multi-Family in order to establish consistency with the existing transient vacation rental use. At that time, “motel” use was an allowable use within the County Apartment District. In 1989, 16 years after the establishment of the transient vacation rental business on the property, “motel” use was disallowed in the Apartment District. The 1998 revision to the Kihei-Makena Community Plan retains the MF Multi-Family designation.

As stated, there is no development proposed at this time, however the Department of Planning requested that this document describe the potential full build-out scenario of the requested Hotel designations. Actual future development would likely be of a much smaller scale in order to retain the character and ambiance of the Nona Lani Cottages. Since the property is within the Special Management Area (SMA), any development of the property and its cumulative impact or significant environmental or ecological effect on the SMA would be reviewed by the Maui Planning Commission in the context of an SMA Use Permit.

The requested County zoning designation, H-1 Hotel, allows transient vacation rentals and other accessory, business, and service establishments which supply commodities or perform services primarily for hotel guests as identified in Section 020 “Permitted uses”, Chapter 19.14 “Hotel Districts”. The lot coverage ratio and floor area-lot area ratio for H-1 zoning is 25 percent and 50 percent, respectively. This would yield approximately 80 - 500 square foot units with a 4,720 square foot allowance for accessory buildings for offices, registration desk, housekeeping, maintenance, and other support functions. The hotel units would be contained within a number of two-story buildings since building heights cannot exceed two stories. Chapter III of this document will examine the potential impacts and mitigation measures that would be required of such a hypothetical scenario, even though the actual development density would likely be more similar in character to the existing facility in order to maintain the family oriented scale and ambience.
E. ALTERNATIVES

1. No action

*Analysis.* As noted previously, the Kihei-Makena Community Plan’s Land Use Map designates the area for MF Multi-Family use, while the County land use designation for the area is R-2 Residential. The subject request seeks to update the designations in order to establish consistency with the existing transient vacation rental use established in 1972.

The “No Action” alternative would maintain the current inconsistencies between the zoning and community plan designations and the existing use. This would create confusion and uncertainty in the future use of the property, and would “technically” prohibit the existing transient vacation rental use of the property. Since the Planning Department recognizes the eight cottages as “legal” and “non-conforming” (See: Appendix “E”, letter dated 3/6/08), its use as transient vacation rentals could continue. However, the flexibility for future renovation/development upgrades would be limited. Unfortunately, for the applicant, the County rarely initiates changes to land use maps in order to establish consistency and the burden of initiating the requested land use changes falls on the respective property owners. The applicant would have to cease operating as a transient vacation rental business and convert to a rental business that would comply with allowable uses within the R-2 Residential District.

2. Alternative Zoning/Uses

*Analysis.* Alternate uses and configurations were considered at the beginning of the project. A summary of these alternatives is presented below:

*Apartment Zoning (County Zoning).* This option would establish a consistency with the existing Kihei-Makena Community Plan designation. However, according to Maui County Code, Title 19, Chapter 19.12, the permitted uses within the Apartment District are limited to long term residential uses and transient vacation rentals are not allowed. Given the applicant’s desire to consider future improvements to the property as a continuing transient vacation rental facility, the Apartment District designation is not a feasible option. Thus, the Apartment (A-1 or A-2) option would preclude the landowner from continuing the current use and restrict the flexibility for any future improvements.

*Single Family Residential Designation (Kihei-Makena Community Plan).* This option would also establish consistency with the existing County zoning designation. R-2
Residential District zoning allows for 7,500 square foot minimum lots and a maximum of 13 lots could be created. However, the applicants wish to maintain the existing family transient vacation rental business operation on the subject property.
III. DESCRIPTION OF THE EXISTING ENVIRONMENT, POTENTIAL IMPACTS AND MITIGATION MEASURES

A. PHYSICAL ENVIRONMENT

Using the “legal baseline” of long term residential use, the analysis of the physical environment comparison between the existing and nonconforming use and the potential uses within the proposed Hotel use designation would be the same as the comparison between the “legal baseline” use and the potential uses within the proposed Hotel use designation. (NOTE: The Department of Planning initially disagreed that the Nona Lani Cottages is an existing nonconforming use [See: Appendix “E”, letter dated 10/18/07]. However, Planning has since reversed its opinion and considers the cottages an existing nonconforming use [See: Appendix “E”, letter dated 3/6/08].)

1. Land Use

Existing Conditions. The 2.27 acre project site is located on the western shoreline of South Maui on South Kihei Road between Ohukai Road and Kaonoulu Road in the town of Kihei (See: Figure No. 3, “Aerial Map”). The immediate area is a patchwork of developed and undeveloped urban zoned land.

The subject property is adjacent to a range of land uses including multi-family and single-family residential, public, and resort uses. To the north are vacant lands that are community planned for multi-family family use. To the east, are the South Pointe multi-family development and single-family residences. Immediately south of the project site are hotel zoned and community planned parcels which have been developed as the Kihei Holiday and the Maui Beach Resort condominium projects. To the west, makai of South Kihei Road, is Maipoina Oe Iau Beach Memorial Park.

The following is a description of zoning, community plan designations, and existing land uses adjacent to the subject property:
The Kong family has owned the property since February 1944 when Frank A. F. Kong purchased the property from the Territory of Hawaii. The property was originally designated as Lot 19, Waiakoa & Waiohuli-Keokea Beach Lots with a tax map key of 3-9-001:045. In 1979, the parcel was re-keyed to its present tax map key of 3-9-041:001. David Kong recalls that the entire property was covered with *kiawe* trees. In 1952, a residence was constructed and David and his wife, Winona, started a family that grew to seven children. At one time, the family raised pigs, peanuts and *kiawe* tree beans to sell as feed for local cattle farmers. Between 1972 and 1973, the *kiawe* trees were cleared and the cottages were constructed to create the Nona Lani Cottages allowing Mrs. Kong to work from home operating a licensed rental business. Following is a chronological list of buildings on the property taken from Maui County Real Property records:

<table>
<thead>
<tr>
<th>Building</th>
<th>Date</th>
<th>Bldg. Permit</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Residence</td>
<td>1952</td>
<td>Not listed</td>
<td>1614 s.f.</td>
</tr>
<tr>
<td>Patio addition</td>
<td>July 1957</td>
<td>57/1159</td>
<td>304 s.f.</td>
</tr>
<tr>
<td>4-Cottages</td>
<td>April 1972</td>
<td>72/0740, 72/0741, 72/0742, 72/0743</td>
<td>396 s.f. with 96 s.f. deck</td>
</tr>
<tr>
<td>Laundry/Storage</td>
<td>Dec. 1973</td>
<td>73/2252</td>
<td>140</td>
</tr>
<tr>
<td>4-Cottage</td>
<td>July 1973</td>
<td>73/1317, 73/1318, 73/1319, 73/1320</td>
<td>396 s.f. with 88 s.f. deck</td>
</tr>
</tbody>
</table>
Prior to Ordinance 2609 in 1997 (Chapter 19.64, Maui County Code), the County did not have any laws regulating transient vacation rentals (TVC) within residential districts. Therefore, the TVR use is an existing nonconforming use since 1972. As stated previously, the 1985 revision to the Kihei-Makena Community Plan changed the land use designation of the subject parcel to MF Multi-Family in order to establish consistency with the existing transient vacation rental use. At that time, “motel” use was an allowable use within the County Apartment District. In 1989, “motel” use was disallowed in the Apartment District. *(NOTE: No violation citation has ever been filed against the property owner prior to October 12, 2007. The Department of Planning initially disagreed that the Nona Lani Cottages is an existing nonconforming use [See: Appendix “E”, letter dated 10/18/07]. However, Planning has since reversed its opinion and considers the cottages an existing nonconforming use [See: Appendix “E”, letter dated 3/6/08].)*

Nona Lani LLC is owned by the David Y.S. Kong Trust and the Winona K. Kong Trust. According to the applicant, the trusts provide for restrictions that bar the transfer of ownership outside of the Kong family until twenty years after the passing of the last of the seven children. This ensures that the property would remain in the family for several decades, preventing an outsider from purchasing the property and developing a denser project.

**Potential Impacts and Mitigation Measures.** The project site is located in an area of North Kihei which features a mix of urban land uses. The requested H Hotel designation and H-1 Hotel District allows for future establishment of an upgraded transient vacation rental project on the parcel and establish zoning compliance for the existing use. The Hotel designation will be a logical extension of hotel zoned properties to the south which include the Kihei Holiday, the Maui Beach Resort and the Maui Lu Resort. The existing urban infrastructure system is proximate to the subject property and capable of servicing any future improvements. *(Note: The immediately adjacent
parcels to the south have been community planned H Hotel and zoned H-1 Hotel District since 1969.)

2. Topography and Soils

Existing Conditions. The project site is relatively flat with uniform slopes. The elevation ranges from approximately 10 feet above mean sea level (MSL) at the mauka (eastern) boundary to approximately 9 feet above MSL at the makai (western) boundary, an approximately half percent (.5%) slope.

According to the “Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii (August, 1972),” prepared by the United States Department of Agriculture Soil Conservation Service, the soils within the project site are classified as Dune Land (DL) (See: Figure No. 9, “Soils Map”). Dune Land customarily occurs in coastal areas of Maui and consists of windblown sand particles that accumulate and form hills and ridges.

Potential Impacts and Mitigation Measures. Any new development on the property would require fill to meet the requirements for building within the Special Flood Hazard Areas. However, there will be no grade alterations since there is no development planned at this time.

3. Flood and Tsunami Zone

Existing Conditions. According to Panel Number 150003 0265 C of the Flood Insurance Rate Map, September 6, 1989, prepared by the United States Federal Emergency Management Agency, the project site is situated in Flood Zone A4. Flood Zone A4 represents areas of 100-year flood with base flood elevations and flood hazard factors determined (See: Figure No. 8, “Flood Zone Map”). The makai side of the property has a base flood elevation of 10 feet. The mauka side has a base flood elevation of 9 feet.

Potential Impacts and Mitigation Measures. As required for any new development on the property, construction would require grading to meet the requirements of Chapter 19.62 “Flood Hazard Areas” of the Maui County Code (MCC). In addition, construction within the Special Flood Hazard Area:

- shall be adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- shall be constructed with materials and utility equipment resistant to flood damage
- shall be constructed using methods and practices that minimize flood damage.
• shall be constructed with electrical, heating, ventilation, plumbing, air conditioning, and other service facilities that are designed or located so as to prevent the entry and accumulation of floodwater.

• shall have the lowest floor, including basement, elevated to, or above, the base flood elevation.

However, since there is no development planned at this time, the proposed action will not have an impact on existing flood and tsunami hazards.

4. Terrestrial Biota (Flora and Fauna)

   Existing Conditions. The project site has been in residential use for at least 50 years. Trees on site include avocado, coconut, kukui, kiawe, mango, lauhala, plumeria, California pepper, various citrus, and monkeypod. Other vegetation found on site includes hibiscus, bougainvillea, various ornamentals, and various grasses and weeds. Feral mammals typically found in this area include mongoose, cats, rats, and mice. Avifauna commonly found in this area includes the common mynah, sparrow, Japanese white-eye, dove, and house finch.

   Potential Impacts and Mitigation Measures. There are no known significant habitats of rare, endangered or threatened species of flora and fauna located on the subject property. Therefore rare, endangered, or threatened species of flora and fauna will not be impacted by the proposed action or any future new development.

5. Air Quality

   Existing Conditions. Air quality refers to the presence or absence of pollutants in the atmosphere. It is the combined result of the natural background and emissions from many pollution sources. The impact of land development activities on air quality in a proposed development’s locale differs by project phase (site preparation, construction, occupancy) and project type. In general, air quality in the Kihei area is considered relatively good. Non-point source emissions (automobile) are not significant to generate a high concentration of pollutants. The relatively high quality of air can also be attributed to the region’s exposure to wind, which quickly disperses concentrations of emissions. The Kihei area is currently in attainment of all criteria pollutants established by the Clean Air Act, as well as, the State of Hawaii Air Quality Standards.

   Potential Impacts and Mitigation Measures. Air quality impacts attributed to any new development could include dust generated by the short-term construction related
activities. Site work such as grading and building construction, for example, could generate airborne particulate. Adequate dust control measures that comply with the provisions of Hawaii Administrative Rules, Chapter 11-60.1, “Air Pollution Control,” Section 11-60.1-33, Fugitive Dust, would be implemented during all phases of construction. Some of these measures will include:

- Providing adequate water source on site prior to start-up of construction activities.
- Landscaping and rapid covering of bare areas, including slopes, beginning with the initial grading phase.
- Controlling of dust from shoulders, project entrances, and access roads.
- Providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.
- Controlling of dust from debris hauled away from project site.

The addition of more hotel units would increase the volume of traffic in the region, which would increase vehicular emissions such as carbon monoxide. The added volume would relatively small, thus the proposed project is not anticipated to be detrimental to local air quality. However, since there are no construction activities planned and there is no increase in traffic associated with the proposed action, there are no impacts to local air quality.

6. Noise Characteristics

**Existing Conditions.** The noise level is an important indicator of environmental quality. In an urban environment, noise is due primarily to vehicular traffic, air traffic, heavy machinery, and ventilation and air-conditioning equipment. Ramifications of various sound levels and types may impact health conditions and an area’s aesthetic appeal. Noise levels in the vicinity of the project area are generally low. Traffic noise from South Kihei Road and noise associated with beach activities are the predominant source of background noise in the vicinity of the subject property.

**Potential Impacts and Mitigation Measures.** In the short-term, new development could generate some adverse impacts during construction. Noise from heavy construction equipment, such as material-carrying trucks and trailers, would be the dominant source of noise during the construction period. To minimize construction related impacts to the surrounding neighbors, the applicant would limit construction activities to normal daylight hours, and adhere to the Department of Health’s Administrative Rules, Chapter
11-46, Community Noise Control.” In the longer-term, new development should not significantly impact existing noise conditions in the area due to the relatively small increase in traffic generated by the project and its proximity to neighboring multi-family and hotel uses. However, the proposed action will not impact existing noise conditions in the area since no improvements are currently planned for the property. No additional traffic will be generated by the action.

7. Archaeological/Historical Resources

**Existing Conditions.** Maui County real property records show the first dwelling structure was constructed in 1952. According to the owner/applicant, his parents acquired the parcel in the 1940s and constructed the original house. At that time, the property was densely covered with *kiawe* trees. From 1972 to 1973, most of the 2.27 acre property was cleared and the currently existing cottages were constructed. This occurred during early development of the visitor industry in North Kihei, when the nearby Maui Lu Hotel was catering to a large number of Canadian visitors.

No archaeological inventory survey has been conducted on the property, but a survey (E. Pestana & M. Dega, 2002, *Archaeological Inventory Survey for the Proposed Kai Makani Condominium Project*) has been conducted on the property immediately to the north (the project is currently under construction) producing negative results. Another survey done on the Maui Lu Hotel property to the south (B. Burgett, et al. 1998) also produced negative results, identifying no evidence of archaeological remains.

**Potential Impacts and Mitigation Measures.** Any proposed new development on the property would likely indicate a need for an archaeological inventory survey in the context of an SMA Use Permit application, however it is unlikely that any archaeological remains would be found given the results of surveys in the area. There are no plans for development or improvements at this time, therefore the proposed action will not have any impact on archaeological or historical resources.

8. Cultural Resources

**Existing Conditions.** The existence of three fishponds at Kalepolepo and at least two *heiau* near the shore confirm the previous presence of a stable pre-contact population the Kihei area in the vicinity of the project site. During the introduction of western influence, Kalepolepo became an important provisioning area and a landing was established there and later at the Kihei wharf to the north. The shoreline area is popular to fishermen, divers and, more recently, board sailing enthusiasts and canoe paddlers.
As previously stated, the applicant’s family has owned the parcel for over sixty years. David Kong, who has lived there for 54 years, has not witnessed any exercise of cultural rights related to gathering, access, or other customary activity occurring on the property.

No cultural impact assessment has been conducted on the property, but an assessment (K.L. Naone, 2002, *Kai Makani Project Cultural Impact Assessment*) has been conducted on the property immediately to the north. Based on Mr. Naone’s knowledge of the property and interviews with family in the area, the assessment concludes “that for the past 30 years at least, there have been no significant cultural practices or beliefs associated with” the Kai Makani property.

**Potential Impacts and Mitigation Measures.** Based on the recollection of the owner of the property whose family has lived on the property for 54 years and the cultural impact assessment on the neighboring property, it is reasonable to conclude that no cultural activities are practiced on the property. The proposed action also does not restrict access to any offsite cultural activities. Therefore, the proposed action will not have an adverse effect on the cultural beliefs, practices, and cultural resources of native Hawaiians or any other ethnic group.

9. Visual Resources

**Existing Conditions.** The subject parcel provide views of the West Maui Mountains, Haleakala and the Pacific Ocean. The *Maui Coastal Scenic Resources Study* (Environmental Planning Associates Inc., 1990) does not identify any views from South Kihei Road in the vicinity of the subject property as unique or distinctive.

**Potential Impacts and Mitigation Measures.** New development on the property would be subject to current setback rules and height limitations for the proposed H-1 Hotel zoning. Hotel room structures would likely be two-story buildings sited mauka-makai to provide public view corridors through the property. However, since there are no current plans for development or the construction of any improvements, no unique public scenic resources or adjacent views will be impacted by the proposed action. Therefore the proposed project is not anticipated to significantly impact public view corridors, or the visual character of the site and its immediate environs.

10. Shoreline Resources

**Existing Conditions.** The subject parcel does not abut the shoreline, however there is a narrow beach reserve located on the makai side of South Kihei Road across from the subject property.
Potential Impacts and Mitigation Measures. Due to the proximity of the shoreline to the subject property, new development on the property may be subject to Shoreline Rules of the Maui Planning Commission. Shoreline setbacks may apply and any new development would comply with the appropriate setback. It is anticipated that any new development on the property would not have a significant effect on the shoreline resources in the vicinity.

B. SOCIO-ECONOMIC ENVIRONMENT

Nona Lani Cottages is a family owned and operated transient vacation rental business which currently consists of twelve (12) vacation rental units. There are no plans for additional development or improvements at this time. (Note: Any future plans for new development/expansion will require a Special Management Area (SMA) Permit.) As discussed in this document, the hypothetical full build-out for H-1 Hotel zoning would consist of approximately 80 units.

1. Population and Housing

Existing Conditions. The population of the County of Maui has exhibited relatively strong growth over the past decade with a 2000 population of 128,241, a 27.6% increase over 1990 population of 100,504. The 2000 population of Maui Island was 117,644. The 2000 population of South Maui District was 22,870, 19.4% of Maui Island's population. (Maui County Community Plan Update Program: Socio-Economic Forecast, SMS Research, June 14, 2002).

The Residential Workforce Housing Policy (RWHP) was approved by the Maui County Council on December 5, 2006 and designated as Ordinance No. 3418. The RWHP would apply to any project with five or more: 1) dwelling units; 2) new, undeveloped lots; 3) combination of dwelling units and new, undeveloped lots; and 4) hotel units. Prior to final subdivision approval or the issuance of a building permit, a developer would commit to providing one or a combination of options as provided in the RWHP.

Potential Impacts and Mitigation Measures. Changing the zoning and community plan designations to hotel will not lead to a direct impact on population levels since there is no residential component. At the hypothetical full build-out, secondary impacts to population levels could arise due to increased employment opportunities; however, these potential increases are considered minimal due to the dynamic nature of the visitor
industry in this district. Therefore, a full build-out project should have minimal impact upon local population levels.

The hypothetical full build-out scenario would be subject to Chapter 2.96 “Residential Workforce Housing Policy”, Maui County Code (MCC). For the purposes of calculating the number of affordable units, the total number of units will be 80 units. After subtracting the 12 existing units at the Nona Lani Cottages, the number of new units will be 68 units for calculation of the residential workforce housing requirement. Based on the 40% affordable housing requirement, the applicant would be required to provide, or convey to a “qualified housing provider” (pursuant to Section 2.96.150), 27 affordable residential workforce housing units for sale or rent.

However, the proposed action does not meet the applicable requirements of Section 2.96.030:

6. *Any hotel redevelopment or renovation project that increases the number of lodging or dwelling units in a hotel.*

The application does not involve construction of additional units.

Any future development will comply with any policies and ordinances relating to affordable housing in effect at the time.

Using the “legal baseline” of long term residential use, the hypothetical 12 residential units would be taken out of the long term residential use. Given the insignificant unit count relative to approximately 9,000 households in the Kihei-Makena Community Plan area, there would be no significant impact.

2. Economy

*Existing Conditions.* The South Maui economy is based primarily upon the visitor industry. Visitor accommodations typically are located near the shoreline along with support facilities and residential communities. South Maui has developed into an important visitor destination, adding to the region’s service, commercial and residential. The existing Nona Lani Cottages does not directly employ a hotel support staff. Maintenance and housekeeping chores are contracted out.

*Potential Impacts and Mitigation Measures.* In the hypothetical full build-out scenario, the project would support construction and construction-related employment on a short-term basis.
On a long-term basis, a full build-out project would result in increased employment and business opportunities. The proposed project would add 68 new units to the facility. These additional units will require additional staff, including housekeeping, administration, maintenance, sales, marketing and management; the number would vary depending on the level of service to be provided. Tax revenues will increase due to increased land values, employment and business transactions.

The construction of the hypothetical full build-out scenario, would not have a significant negative effect on the economy.

C. PUBLIC SERVICES

Using the “legal baseline” of long term residential use, the analysis of the public services comparison between the existing use and the potential uses within the proposed Hotel use designation would be the same as the comparison between the “legal baseline” use and the potential uses within the proposed Hotel use designation, with the exception of schools (See: No. 4 below).

1. Recreational Facilities

Existing Conditions. The South Maui area has a wide reputation as a recreational destination, particularly for ocean related activities. Ocean sports and recreation available in the South Maui District include swimming, fishing, surfing, scuba diving, snorkeling, sailing, and para-sailing. State and County beach parks in the South Maui District include the Maipoina Oe Iau Beach Park (located across the street), Kalama Beach Park, Kamaole Beach Park, Ulua Beach, Wailea Beach, Polo Beach, Makena Beach Park, and Ahihi-Kinau Marine Reserve, including the northern portion of La Perouse Bay.

Potential Impacts and Mitigation Measures. The guests of Nona Lani Cottages will continue to frequent Maipoina Oe Iau Beach Park across South Kihei Road. The Kai Makani project to the north is scheduled to construct major improvements to the park, including parking and a new pavilion. The hypothetical full build-out of the project site would likely increase use of the beach park with increased pedestrian traffic, however no development is proposed at this time and the proposed action will not have any significant negative impact upon existing recreation facilities and services in the region.
2. Police and Fire Protection

*Existing Conditions.* The Maui County Police Department has a local sub-station in Kihei located in the Kihei Town Center, across from Kalama Park, approximately three miles from the subject property.

Fire prevention, suppression, and protection in the Kihei District is provided by Maui County Fire Department’s Kalama Park Station, located approximately three miles from the subject property. The Wailea Fire Station is located at the intersection of Kilohana Drive and Piilani Highway, six miles from the subject property.

*Potential Impacts and Mitigation Measures.* The proposed project will not extend the existing service area limits for emergency services.

3. Solid Waste

*Existing Conditions.* Only two landfills are currently operating on Maui, the Central Maui Landfill in Pulehu, and the Hana landfill. Single-family residential solid waste collection for South Maui is provided by the County and taken to the Central Maui Landfill, which also accepts waste from private refuse collection companies.

*Potential Impacts and Mitigation Measures.* No construction activities are planned at this time, however if any development occurs, in the short term, construction and demolition debris will be reused or recycled when practical, or disposed at a construction and demolition waste landfill.

If any development occurs, solid waste generated over the long term by the project will be reduced by incorporating a green waste composting program. Solid waste collection for the subject property will be provided by a private refuse collection firm and taken to the Central Maui Landfill in Pulehu.

4. Schools

*Existing Conditions.* The Kihei District is serviced by both private and public schools, which provide education for preschool through high school age children. Kihei Charter School provides a high school opportunity in Kihei, however Kihei is within the Maui High School district, a traditional high school located in Kahului. The private schools in the Kihei District include grades kindergarten through eight along with several preschools.
Potential Impacts and Mitigation Measures. The hypothetical full build-out scenario does not have a residential component and is not anticipated to significantly affect school enrollment.

Using the “legal baseline”, the hypothetical 12 units would be taken out of long term residential use. The respective proportional allocations of students in elementary, middle and high schools would be decreased.

D. INFRASTRUCTURE

Note that no new development is proposed at this time. All estimated impacts on infrastructure is based on the hypothetical full build-out scenario. Therefore, the proposed action itself would not have any impact on infrastructure.

1. Roadways and Traffic

Existing Conditions. The automobile is the primary source of transportation in South Maui and an extensive roadway system exists in the South Maui area. Right-of-way widths vary with each roadway. Some roads are paved with curbing and sidewalks while others are comprised of asphaltic concrete pavement and have limited curbs.

South Kihei Road, a two-lane roadway, is a County collector roadway that is the primary north/south roadway servicing Kihei and providing the connection to Wailea and Makena. Access to South Kihei Road is not limited. There is a posted speed limit of 30 mph. The site is accessed from South Kihei Road by two driveways.

For the purpose of establishing the estimated traffic generated by the existing uses, it is assumed that there are nine (9) “all-suites”, three (3) “hotel”, and (1) “single family” units (as described by the Institute of Transportation Engineers [ITE]). This existing condition generates seven (7) AM peak hour trips and eight (8) PM peak hour trips. Using the hypothetical “legal baseline” of ten (10) single family and three (3) apartments, there would be nine (9) AM peak hour trips and twelve (12) PM peak hour trips generated.

Potential Impacts and Mitigation Measures. Generally, a comprehensive traffic analysis should be completed whenever a development is expected to generate 100 or more new inbound or outbound trips during the peak hours (ITE recommended practice). Developments containing about 150 hotel rooms would be expected to generate this level of traffic and hence, require a complete traffic analysis. Thus, the
hypothetical full build-out of the property at the requested H-1 Hotel District zoning (80 units) would not require a comprehensive analysis. Nevertheless, a traffic impact analysis report (TIAR) would likely be prepared to assess the effects of added traffic to intersections to the north at Ohukai Road and to the south at Kaonoulu Road. This TIAR would be the means by which cumulative traffic impacts could be addressed. Although the project scale would be too small to warrant quantification of cumulative traffic by reference to nearby projects, the project's relative contribution to background traffic could be estimated by comparing it to data from a published source such as an adopted long range transportation plan.

Using the ITE trip generation process for hotel rooms, 80 rooms would generate 51 AM peak hour trips and 59 PM peak hour trips. The net increase from existing conditions would be 44 AM peak hour trips and 51 PM peak hour trips. The net increase from the “legal baseline” would be 42 AM peak hour trips and 47 PM peak hour trips.

The applicant would be responsible for any required traffic mitigation measures in connection with any future development and its impact upon regional traffic. These mitigation measures would likely be required as a condition of approval at a predetermined stage of the development process, such as prior to the issuance of future building permits. The Department of Public Works and Environmental Management would likely require roadway improvements which may include road widening, construction of curb, gutter, and sidewalk, and possibly a left turn storage lane into the project site.

Since no development is proposed at this time, there are no traffic impacts associated with the proposed actions.

2. Wastewater

**Existing Conditions.** The Kihei Wastewater Reclamation Facility (KWRF), located to the south of the project site, serves the Kihei and Wailea areas. There is an existing 21 inch sewerline fronting the project site along South Kihei Road.

**Potential Impacts and Mitigation Measures.** According to the Maui Wastewater Reclamation Division, as of December 2005, the KWRF has a remaining capacity of approximately 1.3 million gallons per day. The hypothetical full build-out scenario would generate approximately 20,000 gallons per day. The KWRF would have the capacity to handle the expected additional wastewater flow generated by the hypothetical full build-out scenario, however wastewater capacity for the subject project cannot be ensured until issuance of the building permits. Final wastewater contribution calculations, which would include existing/past property usage, would be submitted.
with the building permit applications for any future new development and the appropriate fees would be paid.

3. Water

*Existing Conditions.* Nona Lani Cottages is serviced by Department of Water Supply's (DWS) Central Maui system. The Iao Aquifer is the primary source for this system. Majority of the water is withdrawn from this aquifer in the vicinity of Iao Stream and Waiehu Stream with the balance withdrawn from the adjacent Waihee aquifer. The property is served by a 1-inch meter.

*Potential Impacts and Mitigation Measures.* An average daily potable demand of 28,000 gallons per day is projected for the hypothetical full build-out of the project site. Additional capacity needed will be determined as the difference between the total average daily demand and the current average consumption. Currently there are no restrictions to obtaining or upgrading water meters in the Central Maui Water System area, however any additional meter requirements will be subject to availability of water from the system or at such time that additional sources are developed. If additional water is not available, any proposed future development would be limited to the available capacity of the existing service.

4. Drainage and Erosion Control

*Existing Conditions.* There are no existing drainage systems in the immediate vicinity of the project site. Presently, onsite runoff sheet flows across the project site in an east to west direction. As the runoff sheet flows toward South Kihei Road, it ponds in the low lying areas within the project site.

*Potential Impacts and Mitigation Measures.* Development of the site to its hypothetical full build-out potential would likely significantly increase the stormwater runoff of the property. As required by the Maui County Code, any increase in runoff would be contained onsite most likely by an above ground and/or underground retention or detention basin incorporated into the landscape planting scheme.

5. Electrical, Telephone, Cable, and Data Systems

*Existing Conditions.* Electrical service to the subject property is presently provided by Maui Electric Company, Ltd. (MECO) powerlines. Any additional electrical power required for any new development will be supplied by MECO.
Hawaiian Telcom maintains overhead telephone lines that provide data and voice communications to the subject property.

Cable TV and data service will be provided by Oceanic Time Warner Cable of Hawaii.

**Potential Impacts and Mitigation Measures.** Electrical loads and distribution line sizes would be determined during the design phase of the any new development. Existing overhead poles and lines on South Kihei Road would be relocated when the road is widened. Electrical, telephone and cable system trunk lines would be extended underground into the project site. The distribution system for these facilities within the development will be placed underground in accordance with the provisions of the Maui County Code.

IV. RELATIONSHIP TO GOVERNMENTAL PLANS, POLICIES, AND CONTROLS

A. STATE LAND USE LAW

Chapter 205, Hawaii Revised Statutes, relating to the Land Use Commission, establishes four major land use districts into which all lands in the State are placed. These districts are designated Urban, Rural, Agricultural, and Conservation. The subject property is within the Urban District.

Analysis: The project area is located in an area within north Kihei. Kihei is one of the major communities of Maui and provides a mix of hotel, resort and residential condominiums, along with single-family housing units and commercial shopping centers with resort and retail businesses. The area has grown substantially over the past fifteen years. The proposed change in land use designations to hotel use is consistent with Urban district uses.

B. GENERAL PLAN OF THE COUNTY

The General Plan of the County of Maui (1990 update) provides long-term goals, objectives, and policies directed toward improving living conditions in the County. The following General Plan Themes, Objectives and Policies are applicable to the proposed project:

I. B. Land Use

Objective No. 1.: To preserve for present and future generations existing geographic, cultural and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County.

Policies:
(b). Provide and maintain a range of land use districts sufficient to meet the social, physical, environmental and economic needs of the community.

Analysis: The Nona Lani Cottages have existed at its present site since 1972 when the Kong family constructed the first cottages providing accommodations for budget-mined travelers. The family owned and operated business provides a unique experience unlike any other resort facility along the South Maui coast.

II. B. Visitor Industry

Objective No. 2: To control the development of visitor facilities so that it does not infringe upon the traditional social, economic and environmental values of our community.

Policies:

(e) Encourage enhancement of existing visitor facilities without substantial increases in room count.

Analysis: The owners of Nona Lani Cottages do not have any plans at present to increase the room count. Any plans to develop the property would be the subject of a Special Management Area Use Permit. The hypothetical full build-out based on the requested H-1 Hotel zoning would yield approximately 80 - 500 square foot units with a 4,720 square foot allowance for accessory buildings for offices, registration desk, housekeeping, maintenance, and other support functions, although actual development would likely be more similar in character to the existing facility.

III. A. Housing

Objective No. 1: To provide a choice of attractive, sanitary and affordable homes for all our residents.

Objective No. 2: Provide affordable housing to be fulfilled by a broad cross-section of housing types.

Analysis: Long term residential use is a permitted use within the R-2 Residential District, however the Nona Lani Cottages is operated as a transient vacation rental, which is currently not a permitted use. Therefore, these objectives do not apply.

III. B. Urban Design

Objective No. 1: To see that all developments are well designed and are in harmony with their surroundings.
Objective No. 2: To encourage developments which reflect the character and the culture of Maui County's people.

Analysis: The nearby Maui Lu development, established in the early 1960s, originally began as a residence and a group of transient vacation rental cottages when the surrounding area in North Kihei was mostly kiawe forest and sparsely populated. (Note: The Kihei-Makena General Plan was adopted in 1968 and the zoning map was adopted in 1969.) Similarly, Nona Lani Cottages was established in 1972 with a residence and transient vacation rental cottages, contrasting with the major tourist destinations of Kaanapali and Wailea. Other neighboring developments in the area, such as the Kihei Holiday and the Maui Beach Resort were developed with denser and more massive designs. No new development is planned on the property at this time, however any new proposal would likely be similar to the existing facility in order to preserve the residential/open space scale and character.

C. KIHEI-MAKENA COMMUNITY PLAN

Nine community plan regions have been established in Maui County. Each region’s growth and development is guided by a community plan, which contains objectives and policies in accordance with the Maui County General Plan. The purpose of the community plan is to outline a relatively detailed agenda for carrying out these objectives.

The subject property is located within the Kihei-Makena Community Plan area which was adopted by Ordinance No. 2641 on March 6, 1998. The Kihei-Makena Community Plan designation for the subject property is currently MF Multi-Family. The parcel has been used as the family owned and operated Nona Lani Cottages with twelve (12) transient vacation rental units for the past 33 years. The 1985 revision to the Kihei-Makena Community Plan changed the land use designation of the subject parcel to MF Multi-Family in order to establish consistency with the existing use. At that time, “motel” use was an allowable use within the County Apartment District. In 1989, “motel” use was disallowed in the Apartment District.

The applicant is requesting a Community Plan Amendment to change the designation from MF Multi-Family to H Hotel. This Draft Environmental Assessment examines any impacts this amendment might have on the immediate area.
LAND USE

Goal

A well-planned community with land use and development patterns designed to achieve the efficient and timely provision of infrastructural and community needs while preserving and enhancing the unique character of Ma`alaea, Kihei, Wailea and Makena as well as the region’s natural environment, marine resources and traditional shoreline uses.

Objectives and Policies

d. Limit hotel uses to those areas presently planned for hotel use, and limit hotel development until adequate public facilities and services are established to meet existing needs.

Analysis: The subject property has been used for transient vacation rental since 1972, prior to the adoption of the Maui County General Plan (June 24, 1980). (Note: The immediately adjacent parcels to the south have been community planned H Hotel and county zoned H-1 Hotel District since 1969.) The proposed rezoning will not impact existing public facilities and services. Section III.C discusses the effects of the hypothetical full build-out on public services along with possible mitigation measures.

ECONOMIC ACTIVITY

Goal

A diversified and stable economic base which serves resident and visitor needs while providing long-term resident employment.

Objectives and Policies

d. Establish balance between visitor industry employment and nonvisitor industry employment.

Analysis: The Nona Lani Cottages is a transient vacation rental property that will remain as it currently exists with no increase in density at this time. Thus, the proposed action will not have any impact on public facilities and services nor will it have any effect on employment opportunities. Subchapter III.B discusses the impacts of the hypothetical full-build out on the economy and housing.
**HOUSING AND URBAN DESIGN**

*Goal*

A variety of attractive, sanitary, safe and affordable homes for Kihei’s residents, especially for families earning less than the median income for families within the County. Also, a built environment which provides complementary and aesthetically pleasing physical and visual linkages with the natural environment.

*Analysis:* Long term residential use is a permitted use within the Multi-family Residential use designation, however the Nona Lani Cottages is operated as a transient vacation rental, which would not currently be a permitted use. Therefore, the goal of providing affordable homes does not apply. The Nona Lani Cottages is a low density development along South Kihei Road that was established in 1972 when the surrounding area was sparsely populated and transient vacation rental use was not a specifically prohibited use in the R-2 Residential District. The residential character was complementary to the area at the time.

**D. COUNTY ZONING**

The applicant is requesting a Change in Zoning from R-2 Residential to H-1 Hotel in order to ultimately allow for the subject properties to be consistent with current use and provide flexibility for possible future expansion and accessory uses. A request for a “Change in Zoning” must meet the following criteria as found in MCC § 19510.040.4:

1. *The proposed request meets the intent of the general plan and objectives and policies of the community plans of the county;*

   *Analysis:* As described in Subchapters B and C, the proposed action meets the intent of the general plan and the objectives and policies of the Kihei-Makena Community Plan.

2. *The proposed request is consistent with the applicable community plan land use map of the county;*

   *Analysis:* The Kihei-Makena Community Plan, adopted March 6, 1998 by Ordinance No. 2641, identifies the subject parcels as MF Multi-Family. A Community Plan Amendment requesting to re-designate the subject property as H Hotel is submitted concurrently with this rezoning request.
3. The proposed request meets the intent and purpose of the district being requested;

   Analysis: Pursuant to MCC Section 19.14.010, the Hotel District “is a high density multiple-family area bordering business districts and ocean fronts. This district includes public and semi-public institutional and accessory uses. This district is basically residential in character and, as such, should not be spotted with commercial enterprises.”

   The proposed Change in Zoning accomplishes these objectives and will allow for a land use that is in character with the existing/historical transient vacation rental use and that of hotel zoned properties to the south. Additionally, the proposed zoning conforms with the County General Plan.

4. The application, if granted, would not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences and improvements.

   Analysis: As described in Subchapters III.C and III.D, the proposed Change in Zoning will not adversely impact schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, traffic, or other public infrastructure and services.

5. The application, if granted would not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the surrounding area.

   Analysis: As discussed in Chapter III, the proposed action will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the surrounding area;

6. If the application change in zoning involves the establishment of an agricultural district with a minimum lot size of two acres, an agricultural feasibility study shall be required and reviewed by the Department of Agriculture and the U.S. Soil Conservation Service.

   Analysis: Not Applicable.

Conformance with proposed H-1 Hotel District zoning:

   The existing development is an allowable use within the district.
<table>
<thead>
<tr>
<th></th>
<th>H-1 Hotel</th>
<th>Nona Lani Cottages</th>
<th>Hypothetical Full Build-out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area</td>
<td>Minimum 10,000 sq. ft.</td>
<td>2.27 acres (98,881 sq. ft.)</td>
<td>80 – 500 s.f. hotel units; 4720 s.f. Lobby/offices/support services</td>
</tr>
<tr>
<td>Height</td>
<td>Two-story maximum</td>
<td>Cottages – one-story; Main structure – two-stories.</td>
<td>25%</td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>25%</td>
<td>7%</td>
<td>25%</td>
</tr>
<tr>
<td>Floor area – lot area ratio</td>
<td>50%</td>
<td>9%</td>
<td>45%</td>
</tr>
</tbody>
</table>

V. HRS CHAPTER 343 SIGNIFICANCE CRITERIA

A finding of no significant impact (FONSI) is anticipated and therefore an environmental impact statement will not be required for the proposed action. Using the hypothetical full build-out of the property (referred to as the “proposed project”), this determination has been made in accordance with the following significance criteria specified in Section 11-200-12 of the Department of Health rules relating to Environmental Impact Statements:

A. **Involves an irrevocable commitment to loss or destruction of any natural or cultural resource.**

As documented in this report, the existing cultural and natural resources on the property will be preserved and the proposed project will not result in their loss or destruction.

B. **Curtails the range of beneficial uses of the environment.**

The neighboring properties to the south are in hotel use and the proposed project does not introduce a new use to the area. The project will not curtail the range of beneficial uses of the environment in the project vicinity.

C. **Conflicts with the state’s long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders.**

The proposed project would be developed in compliance with the state’s long term environmental goals. As documented in this report, adequate mitigation measures
would be implemented to minimize the potential for negative impacts to the environment.

D. *Substantially affects the economic or social welfare of the community or state.*

The proposed project would result in increased employment and business opportunities in the short term. As documented in this report, there would be no significant negative long term impacts to the socio-economic environment.

E. *Substantially affects public health.*

There are no special or unique aspects of the project which will have an impact on public health.

F. *Involves substantial secondary impacts, such as population changes or effects on public facilities.*

The proposed project could lead to secondary impacts to population levels due to increased employment opportunities; however, these potential increases are considered minimal due to the dynamic nature of the visitor industry in this district. As documented in this report, the full build-out scenario would not result in a significant negative impact on public facilities.

G. *Involves a substantial degradation of environmental quality.*

Mitigation measures would be implemented during construction to minimize negative short term impacts such as soil erosion and sedimentation. The project design would incorporate a drainage system that will minimize degradation of the environmental quality.

H. *Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions.*

The proposed project is considered the maximum development of the property and, therefore, does not involve a commitment for larger actions on behalf of the applicant or any public agency. In terms of cumulative impacts, the project site is situated within the State Urban District and adjacent to developed residential and resort areas. Infrastructure and utilities are adequate to service the proposed project. Therefore, the project will not result in cumulative negative impacts on the environment.

I. *Substantially affects a rare, threatened, or endangered species, or its habitat.*

There are no known rare, threatened, or endangered species or habitat at the project site.
J. **Detrimentally affects air or water quality or ambient noise levels.**

As documented, there will be short term impacts on air and water quality and ambient noise levels during construction of the proposed project; however, mitigation measures will be employed to minimize these impacts. Adverse long-term impacts are not anticipated.

K. **Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion prone area, geologically hazardous land, estuary, fresh water, or coastal waters.**

The project site is located within a flood plain and tsunami zone. The proposed project would be constructed within Zone A4, an area subject to 100-year flooding. Compliance with County grading requirements would be met.

L. **Substantially affects scenic vistas and view planes identified in county or state plans or studies.**

As discussed in Section III.A.9, the proposed project will not negatively affect ocean views along South Kihei Road nor obstruct major view corridors.

M. **Requires substantial energy consumption.**

Construction of proposed project would comply with Chapter 16.26.1300, "Energy Conservation", Maui County Code. Where practicable and economically feasible, the proposed project would meet or exceed the building efficiency standard for the State of Hawaii.

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**VI. FINDINGS AND CONCLUSIONS**

This Final Environmental Assessment and application for a Community Plan Amendment (CPA) from MF Multi-Family to H Hotel and a County Change in Zoning (CIZ) from R-2 Residential District to H-1 Hotel District for a 2.27 acre site at Kihei, Maui, Hawaii (TMK (2) 3-9-041:001) analyzes the environmental and socio-economic impacts associated with the applicants’ proposal to establish consistency between the County’s Kihei-Makena Community Plan and County zoning land use designations and the current transient vacation use.

This proposed entitlement action is not anticipated to result in environmental impacts to surrounding properties, near shore waters, natural resources, and/or archaeological and historic resources on the site or in the immediate area. Since no increase in density or additional
development is planned at this time, public infrastructure and services including roadways, sewer and water systems, medical facilities, police and fire protection, parks, and schools, are adequate to serve the property. The proposed action will not impact public ocean/mountain view corridors and will not produce significant adverse impacts upon the visual character of the site and its immediate environs.

This report also analyzes the environmental impacts and impacts to public infrastructure and services for a hypothetical full build-out scenario of a hotel with 80 - 500 square foot units and 4,720 square feet of accessory buildings for offices, registration desk, housekeeping, maintenance, and other support functions. The hotel units would be contained within several two-story buildings. This document examined the potential impacts and mitigation measures that would be required of such a hypothetical scenario, although actual development would likely be more similar in character to the existing facility.

The subject property is situated within the State’s Urban District and is community planned for Multi-Family development and County zoned R-2 Residential. The Applicants’ proposal to amend the community plan designation from MF Multi-Family to H Hotel and change the County zoning from R-2 Residential District to H-1 Hotel District support the existing/historical transient vacation rental use on the property and the mixture of resort, residential, and public uses that characterizes the immediate area. Rezoning the subject parcel would be consistent with the State Urban land use designation. As such, the proposed action is consistent with the objectives and policies contained within the Kihei-Makena Community Plan, as well as State Land Use Law, and the County’s Comprehensive Zoning Ordinance.

Based on the foregoing analysis and conclusion, the proposed action will not result in significant impacts to the environment and is consistent with the requirements of HRS Chapter 343, and a Finding of No Significant Impact (FONSI) is warranted.


VI. REFERENCES


FIGURE 1

REGIONAL LOCATION

Nona Lani Cottages
FIGURE 2

Parcel 1
Not to Scale
JANUARY 2007
TAX MAP
Nona Lani Cottages

PROJECT SITE
FIGURE 3

Mai Poina Oe Lau Beach Park

To Maalaea

South Kihei Road

To Wailea

Kihei Holiday

Maui Beach Resort

Future Kai Makani Development

Koki Street

Kuilima Place

Kenolio Road

Southpointe Apartments

PROJECT SITE

Photo taken 6/13/2000

JANUARY 2007

AERIAL MAP

Nona Lani Cottages
FIGURE 6

PROJECT SITE

Nona Lani Cottages

KIHEI-MAKENA COMMUNITY PLAN

JANUARY 2007
FIGURE 8

Not to Scale
FEMA Flood Insurance Map
JANUARY 2007
FLOOD MAP
Nona Lani Cottages

Panel 163 (8/3/1998)
FIGURE 9

Not to Scale
JANUARY 2007

SOILS MAP
Nona Lani Cottages
FIGURE 10.1

Photos taken
11/30/2004

JANUARY 2007

PHOTOGRAPHS
Nona Lani Cottages

Photo 1: Looking southeast from Mai Poina Oe Iau Beach Park across South Kihei Road at northwest corner of property.

Photo 2: Sign at main entrance with the Kihei Holiday in the background.

Photo 3: View of the property from the south corner. South Kihei Road at left, Cottage No. 1 at center with driveway and parking at right.

Photo 4: Entrance to main building and office.

Photo 5: View from front of property looking northeast from across South Kihei Road. Cottages from left, No. 4 (obscured by tree), No. 3, and No. 2.

Photo 6: View from front of property looking southeast from across South Kihei Road. Cottages from left, No. 2 and No. 1.
FIGURE 10.2

Photos taken 11/30/2004 unless otherwise noted
JANUARY 2007

PHOTOGRAPHS
Nona Lani Cottages

Photo 7: View from western corner. Driveway along northern boundary at left, Cottage No. 4 at center, South Kihei Road at right.

Photo 8: Looking down driveway along northern boundary toward South Kihei Road.

Photo 9: Looking south from northern boundary. 5,147 square foot main structure at right.

Photo 10: View of gazebo area in front of main residence structure.
Photo 11: View of front of main structure. At left, is the north wing housing four vacation rental units.

Photo 12: View from eastern corner of property looking at the south side of the main structure. Fence along Southpointe boundary visible at right.

Photo 13: Rear view of main structure.

Photo 14: View of northeast corner of main structure.
APPENDICES
APPENDIX A
Ownership Documents
WARRANTY DEED

Grantor: DAVID Y. S. KONG, Trustee under the David Y. S. Kong Trust dated May 9, 1990, and

WINONA K. KONG, Trustee under the Winona K. Kong Trust dated May 9, 1990,

which Trustees are each empowered to hold, develop, lease, assign, convey, sell, encumber and/or otherwise deal with real property pursuant to those certain trust powers more particularly set forth in each said Trust

Grantee: NONA LANI COTTAGES LLC, a Hawaii limited liability company

Grantee's Address: 455 South Kihei Road
Kihei, Hawaii 96753

Grantee's Tenancy: TENANT IN SEVERALTY

Subject Property: Lot 19, Waiakoa House Lots, Waiakoa, Kula, Island and County of Maui, State of Hawaii
THIS DEED is made from the parties named above and hereinafter collectively referred to as "Grantor," to the party named above and hereinafter referred to as "Grantee." Grantee's address is as set forth above.

WITNESSETH

Conveyance. Grantor, for and in consideration of the sum of TEN DOLLARS ($10.00), and other valuable consideration to Grantor paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee, in the name and tenancy as set forth above, the property noted above and more completely described in Exhibit "A" attached hereto and by this reference made a part hereof, together with all buildings and improvements thereon, all rights, privileges, and easements held or enjoyed in connection therewith or appurtenant thereto, all reversions, rents, issues and profits therefrom, and all of the estate, right, title and interest of Grantor, both at law and in equity, therein and thereto.

Grantee's Interest. TO HAVE AND TO HOLD the same unto Grantee, in the tenancy aforesaid, and unto Grantee's legal representatives, successors and assigns, forever.

Grantor's Covenants. AND Grantor does hereby covenant and agree with Grantee, Grantee's legal representatives, successors and assigns, that Grantor is lawfully seised in fee simple of the premises hereby conveyed, that Grantor has good right to sell and convey the same as aforesaid, that the same are free and clear from all encumbrances, except non-delinquent real property taxes and those encumbrances, easements, restrictions and reservations, if any, as may be described in Exhibit "A."

AND GRANTOR will, and Grantor's successors and assigns shall, forever WARRANT AND DEFEND the title to the land against the lawful claims and demands of all persons, except as noted herein.

Definitions. AT ALL TIMES HEREIN the terms "Grantor" and "Grantee" or any pronouns used in place thereof shall mean and include, and any and all covenants shall be deemed to be binding upon or inure to the benefit of, the masculine or feminine, singular or plural number, and individuals, firms or entities, and their and each of their respective heirs, legal representatives, successors and assigns, according to the context thereof.
IN WITNESS WHEREOF, Grantor has caused this Deed to be executed this date: December 1, 2000, but effective as of January 2, 2001.

GRANTOR:

[Signature]

DAVID Y. S. KONG
Trustee aforesaid

[Signature]

WINONA K. KONG
Trustee aforesaid

STATE OF HAWAI'I
County of Maui

On this date: December 1, 2000, before me personally appeared DAVID Y. S. KONG and WINONA K. KONG, in their capacities as Trustees aforesaid, as Grantor, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed in the capacities stated above.

[Signature]

Catherine P. Awakuni
Print Name: CATHERINE P. AWAKUNI
Notary Public, State of Hawaii
My Commission expires: 10/15/2004
EXHIBIT "A"

All of that certain parcel of land (being all of the land described in and covered by Land patent Grant Number 12,958 to Ah Moy Leong Kong, also known as Cecelia Ah Moy Kong), situate at Waiakoa, in the District of Kula, Island of Maui, State of Hawaii, being a portion of the Government Land of Waiakoa, and also being Lot 19 of the Waiakoa House Lots, and being more particularly described as follows:

BEGINNING at a pipe at the southwest corner of this lot, the northwest corner of Lot 20, Waiakoa House Lots, and on the east side of Kihei-Makena Road (40 feet wide), the coordinates of said point of beginning referred to a + on rock (Kalaepohaku) at seashore and on the boundary between the lands of Pulehunui and Waiakoa being 3160.73 feet South and 870.22 feet East, and the coordinates of said + on rock (Kalaepohaku) referred to Government Survey Triangulation Station "Puu-o-Kali" being 17875.5 feet North and 25734.0 feet West, as shown on Government Survey Registered Map 3028, and running by azimuths measured clockwise from True South:

1. 164' 47' 30" 289.67 feet along the east side of Kihei-Makena Road to a pipe;
2. 254' 47' 30" 358.95 feet along Lot 18, Waiakoa House Lots to a pipe;
3. 352' 17' 165.30 feet along Lot 4, Waiakoa Homesteads, Makai Section (Grant 7108 to Lelaloha) to a pipe;
4. 348' 10' 126.00 feet along same to a pipe;
5. 74' 47' 30" 329.97 feet along Lot 20, Waiakoa House Lots to the point of beginning. Containing an area of 2.27 acres.

Being the same premises conveyed to Grantor herein by deed dated May 9, 1990, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-084264.

TOGETHER WITH any and all right, title or interest of the Grantor under any lease, agreement of sale, or other document or agreement related to the said property.
SUBJECT, HOWEVER, to any and all terms, conditions, reservations, covenants, restrictions, easements, encumbrances, and/or other matters affecting title to the said property presently of record and created or agreed to by the Grantor herein.

END OF EXHIBIT "A".
STATE OF HAWAII

DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS

Business Registration Division
1010 Richards Street
P.O. Box 40
Honolulu, Hawaii 96810

ARTICLES OF ORGANIZATION

OF

NONA LANI COTTAGES LLC

A HAWAII LIMITED LIABILITY COMPANY

BODDEN & MURAOKA
Attorneys at Law ♦ A Law Corporation
200 Wailuku Executive Center
24 North Church Street
Wailuku, Maui, Hawaii 96793
Telephone: (808) 244-8222

Attorneys for Organizers
ARTICLES OF ORGANIZATION

OF

NONA LANI COTTAGES LLC

The undersigned, for the purpose of forming a limited liability company under the laws of the State of Hawaii, and who desire to obtain the benefits conferred by said laws upon limited liability companies, do hereby make and execute these Articles of Organization.

I. NAME

The name of the company shall be NONA LANI COTTAGES LLC.

II. INITIAL DESIGNATED OFFICE

The street address of the initial designated office shall be 455 South Kihei Road, Kihei, Hawaii 96753. The designated office may hereafter be relocated to such other place as shall be specified from time to time according to the Operating Agreement of the company.
III. NAME AND ADDRESS OF INITIAL AGENT FOR SERVICE OF PROCESS

The company shall have and continuously maintain in the State of Hawaii an agent for service of process on the company. The name of the initial agent for service of process of the company is CHERLYN J. KONG, whose street address is 455 South Kihei Road, Kihei, Hawaii 96753.

IV. NAME AND ADDRESS OF EACH ORGANIZER

The name and address of each organizer are as follows:

DAVID Y.S. KONG, SR.        WINONA K. KONG
455 South Kihei Road        455 South Kihei Road
Kihei, Hawaii 96753         Kihei, Hawaii 96753

V. TERM

The term of the company shall begin on the day these Articles of Organization are filed with the Hawaii Department of Commerce and Consumer Affairs and shall continue for a specific term which will expire on December 31, 2040.

VI. MANAGEMENT OF THE COMPANY

The management of the company is vested in the managers. The name and residence street address of each manager are as listed below. The number of initial members is two.

DAVID Y.S. KONG, SR.        WINONA K. KONG
455 South Kihei Road        455 South Kihei Road
Kihei, Hawaii 96753         Kihei, Hawaii 96753

CHERLYN J. KONG
455 South Kihei Road
Kihei, Hawaii 96753

The transfer or encumbrance of any real property owned by the company shall require the prior written approval of all of the membership units.
VII. LIABILITY OF MEMBERS

No member or manager, solely by virtue of being a member or manager, shall be liable for the debts and obligations of the company.

VIII. AMENDMENT

These Articles may be amended by the members in the manner set forth in the Operating Agreement.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements and that the same are true and correct to the best of our knowledge.

Signed this date: December 1, 2000.

ORGANIZERS:

DAVID Y.S. KONG, SR.

WINONA K. KONG
APPENDIX B
Zoning and Flood Confirmation
COUNTY OF MAUI
DEPARTMENT OF PLANNING

ZONING AND FLOOD CONFIRMATION REQUEST FORM

APPLICANT: Chris Hart & Partners, Inc. PHONE NO.: 242-1955
ADDRESS: __________________________
PROJECT NAME: Nona Lani Cottages
ADDRESS AND/OR LOCATION: 455 South Kihei Road, Kihei, Maui, Hawaii
TMK NUMBER(S): (2) 3-9-041:001

ZONING INFORMATION
STATE LAND USE Urban COMMUNITY PLAN Multi-family
COUNTY ZONING R-2 Residential SPECIAL DISTRICT Special Management Area
OTHER __________________________

FLOOD INFORMATION
FLOOD HAZARD AREA* ZONE A4
BASE FLOOD ELEVATION * 10' mean sea level, 1929 National
Geodetic Vertical Datum or for Flood Zone A0, FLOOD DEPTH N/A feet.

FLOODWAY [ ] Yes or [ ] No

FLOOD DEVELOPMENT PERMIT IS REQUIRED [ ] Yes or [ ] No
* For flood hazard area zones B or C; a flood development permit would be required
if any work is done in any drainage facility or stream area that would reduce the
capacity of the drainage facility, river, or stream, or adversely affect downstream
property.

FOR COUNTY USE ONLY

REMARKS/COMMENTS: ________________________________
☐ Additional information required.
☐ Information submitted is correct.
☐ Correction has been made and initialed.

Reviewed and Confirmed by:
AARON SHINMOTO
Planning Program Administrator
Zoning Administration and Enforcement Division
Signature ________________ Date 1-25-2005
APPENDIX C
List of Owners of Properties Within 500 Feet
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MAP SHOWING PARCELS
WITHIN 500 FEET OF
TMK: (2) 3-9-041:001
Kihei, Maui, Hawaii
APPENDIX D
Survey Map
TOPOGRAPHIC SURVEY OF
LOT 19 OF THE WAIAKOA HOUSE LOTS
Being Grant 12958 to Ah Hoy Leong Kong
SITATED AT WAIAKO, NUIA, MAUI, HAWAII

Scale: 1 inch = 40 feet
APPENDIX E
Planning Department Pre-consultation
Mr. Thomas D. Welch, Esq.
Mancini, Welch, and Geiger, LLP.
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732

Dear Mr. Welch:

SUBJECT: NONA LANI COTTAGES LLC TEMPORARY VACATION RENTALS
DAVID Y.S. KONG AND WINONA KONG – NOTICE OF WARNING,
ON TMK: (2) 3-9-041:001, ISSUE OF LEGALITY OF SHORT TERM
RENTAL OPERATIONS (BVA 2007/0011); (EA 2006/0002);
(CPA 2006/0001); AND (CIZ 2006/0001)

The Department of Planning (Department) has reviewed materials you and your clients have provided to the Department subsequent to your filing, on November 16, 2007, a Notice of Appeal of the Director’s October 12, 2007, letter/Notice of Warning. Given a review of this additional information, the Department concurs that under the 1971 “Permanent Ordinances of the County of Maui”, the short term rental use of the eight cottages on the subject property was legal if established, as you have stated, upon the completion of their construction in the early 1970s. Such short term rental uses legally operating on lands zoned R, or Residential districts at that time, became permitted, non-conforming uses in 1981 as defined in Maui County Code Section 19.04.040.

Section 19.500.110 C.2. of the Maui County Code states that “Any nonconforming use that is discontinued for twelve consecutive months shall not be resumed.” As your clients have submitted adequate evidence that their short term or transient vacation rental use of the eight cottages on the subject property has been continuous since the use first became non-conforming in 1981, the previous position of the Department as set out in its letters dated on May 25, 2007, August 16, 2007, and October 18, 2007, - that the current use is not permitted -is withdrawn. The Notice of Warning letter dated October 12, 2007, is hereby rescinded as to the eight cottages. The Notice of Warning as to use of the 4 rooms constructed in 1990-91 is not rescinded by this letter.

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253
The Department has determined that your clients may continue to operate the eight cottages of the Nona Lani Cottages for transient vacation rentals as long as this use continues to comply with the requirements for non-conforming use as set out in Maui County Code Section 19.500.110C.2.

If you have questions about this letter, please feel free to contact Mr. Jeffrey Dack, Staff Planner, at jeffrey.dack@mauicounty.gov or at 270-6275.

Sincerely,

Jeffrey S. Hunt, AICP
Planning Director

JSH:JPD:bg
c: Colleen M. Suyama, Deputy Planning Director
Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, P.E., Planning Program Administrator, ZAED
Jeffrey P. Dack, AICP, Staff Planner
Trisha Kapua'ala, Staff Planner, ZAED
Mary Blaine Johnston, Deputy Corporation Counsel
Project File
General File
October 24, 2007

Via Hand Delivery:
Jeffrey P. Dack
Staff Planner
County of Maui
200 S. High Street
Wailuku, HI 96793

Jeffrey S. Hunt
Planning Director
County of Maui
200 S. High Street
Wailuku, HI 96793

Re: Mr. and Mrs. David Kong – Notice of Violation on TMK (2) 3-9-41:1:
Issue of Illegality of Short Term Rental Operations

Dear Jeff Dack and Jeff Hunt:

I have been engaged by Mr. and Mrs. David Kong in connection with the Notice of Violation delivered by Charles Villanon to them on October 17, 2007, citing their operation of the Nona Lani Cottages in Kihei.

I understand that the Notice was served on the Kongs based on Jeff Dack’s legal conclusion that the eight cottages on the property should be characterized as a “Motel” under the Maui 1971 zoning ordinance. This is stated in his letter to Chris Hart dated May 25, 2007 (copy enclosed). If they are a “Motel,” they are not grandfathered as a nonconforming use. If they are not a “Motel,” they are grandfathered.

I respectfully disagree with Jeff’s conclusion. For the reasons outlined below we ask that you reconsider this matter and withdraw the Notice of Violation with respect to the eight cottages on the property.

This is of huge importance to the family who has been operating the cottages as their primary business and source of income since they were built in 1972. The prompt resolution of this issue is urgent for them since they have received reservations and deposits for January and February. If they comply with
your Notice of Violation to cease operation by January 1, 2008 their loss of that business and income will be irretrievable.

While we fully understand the County’s need to follow the law on transient rentals (particularly in the present public controversy), we strongly believe that the law in this case permits the Kongs to operate the cottages for transient use. I will set forth the analysis below.

1. **The eight cottages are permitted structures in 1971 and there is no limitation contained in the 1971 ordinance as to the term of permitted rentals.** There is no question that each of these buildings were properly permitted as "Dwellings" in 1971 and 1972 and each cottage clearly met the definition of "Dwelling Units" under Section 8-1.2 of the 1971 zoning ordinance. Also there is no question about the fact that the 1971 zoning ordinance did not regulate rental terms or length of stay with respect to the rental use of dwelling units. The restriction on "transient" rentals does not appear in our ordinance until 1980 (State) and 1981 (County).

2. **The only question is: was this a "Motel"?** The only way you could argue that short term rental use was not legal in 1972 is if you can interpret Section 8-1.2’s definition of "Motel" to mean the buildings and uses on the Kong’s property. As stated above, the buildings and uses are legal unless they clearly fall under the "Motel" definition.

Are the cottages a "Motel"? The answer depends in part upon the physical configuration of parking. Under Section 8-1.2 a group of detached dwellings designed for transients is not a "Motel" unless the Units have "garages attached or parking spaces conveniently located to each Unit." The parking on the Kongs’ property clearly does not meet this configuration. Most of the parking is crammed into a narrow driveway/parking area along the southerly ten per cent of the land and is not designed or intended to be "conveniently located to each Unit." In fact some of the cottage renters are required to walk (and carry their bags) over 100 feet over walkways and the landscaped yard. The enclosed photos show this.

The absence of “convenient" parking to “each” Unit should definitively dispose of this issue in the Kong’s favor. This result would also be consistent with the general intent of the ordinance. The definition of "Motel" is, by its terms, clearly intended to describe an automobile-oriented highway-type facility, "for automobile tourists and transients" in which each guest may drive up to and park at his or her Unit. It describes a structure of the kind generally understood in the continental U.S. as a motel or motor lodge.
October 24, 2007
Jeffrey P. Dack and
Jeffrey S. Hunt, County of Maui
Page 3

The configuration of the Nona Lani Cottages neither resembles a
“Motel” or “motor lodge” as normally envisioned or configured nor meets the
requirement of an automobile-oriented facility. While parking is closer to some
units than others, “each unit” clearly does not have its own attached garage or
“conveniently located” parking. Nor does it have a motel office (the Kongs meet
arriving guests in their living room), or any of the physical appearance normally
understood (in 1972) as a “Motel” or “motor lodge.” Nor does it fall into the
category of an “auto court,” or “tourist court” since it lacks the “court”
configuration as defined in the ordinance.

While most Nona Lani guests rent cars for their Hawaiian vacation
they clearly did not fall within the intended concept of “automobile tourists” or
“transients”. For 35 years Nona Lani renters have come to the facility as their
Hawaiian vacation destination, not as a transient stopover on an automobile tour.
The word “transient” in 1971 is not defined in the ordinance. The normal
meaning in the 1971 ordinance would be understood as “passing through a place
with only a brief stay or sojourn.” (Webster’s 9th Collegiate Dictionary) Nona Lani
guests often stayed for weeks, and during winter months, the guests who
returned often stayed 1-2 months and continue to do so. In other words, this is a
small resort destination and not a place for people who are just passing through
in their cars from one place to another.

3. Our Request. For the foregoing reasons we feel that the short term
rental use of Nona Lani Cottages was a permitted use, and not prohibited, when
the use was started in 1971 and 1972. They have been used the same way
consistently for over 35 years, with no cessation or hiatus, and thus fall within the
requirements for legal nonconforming use.

Even if one could argue that the definition of “Motel” is unclear or
subject to reasonable doubt in its interpretation or its application to these facts,
Hawaii law requires the County of Maui to give the Kongs the benefit of the
doubt. This is required by the general rule that where there is an uncertainty or
ambiguity in a land use law (or its application), the enforcing governmental
agency must construe the uncertainty in the landowner’s favor. This is also the
decent thing to do given this family’s operating history.¹

¹ See, e.g. Foster Village Community Association & Hess, 4 Haw.App. 463 (1983). The Court
held that a pig was an “accessory use” in the residential zone because its use was not as
“livestock” but as a “pet.” The Court said, at page 460, that

“If possible, legislative intent should be obtained primarily from the language of
the statute…. Zoning laws should be strictly construed, as they are in derogation
of common law, and their provisions may not be extended by implication.”

See also Walkihi Marketplace v. Zoning Board of Appeals, 86 Haw. 343 (1997) in which the
Supreme Court, citing the Foster Village Community Association case, held that an addition to a
Finally, this case is unique and not similar to those other vacation rental operations which are at the heart of the current controversy and enforcement program. The great majority of those situations do not have valid nonconforming uses. Deciding in the Kong's favor does not create a dangerous precedent.

4. My Recommendations to the Kong's. I understand that 3 of the 4 bedrooms and baths, added to the Kong's main house in 1990, are being used for short term rentals, in addition to the cottages. Since those facilities would not have been grandfathered as nonconforming uses I have advised the Kong's to stop vacation rental operations with respect to those rooms, not later than January 1, 2008.

I have also advised the Kong's that if they refuse to stop their operations with respect to the eight cottages and if the County seeks to enforce its Notice of Violation as to cottages by injunction, fines or penalties, the Kong's should take all legal actions to oppose such action by litigation based on the foregoing analysis.

Also, please remember that the Kong's have applied for a change in zoning and have been working on that with the County for two years, having filed their amendment application in January of last year. The rezoning is important to them in the long run in order to enable them to properly maintain and replace their facilities when needed. In the meantime, why should the County refuse reasonable accommodation to the needs of this kama'aina family?

Thank you for your consideration. I look forward to hearing from you.

Very truly yours,

[Signature]

Thomas D. Welch

TDW:mz

Enclosures

structure built illegally without a building permit was nevertheless entitled to legal, nonconforming status as a structure which was "previously lawful" under the land use provisions of the Honolulu zoning and land code. The court reasoned that it was a structure allowed by zoning, and the word "lawful" should be strictly construed as meaning lawful as to use, even if unlawful under the building code.

104367.4 tdw wd
October 24, 2007

Jeffrey P. Dack and
Jeffrey S. Hunt, County of Maui

Page 5

cc:  Mr. and Mrs. David Kong
Charles Villanon, Zoning Inspector, County of Maui
Clayton I. Yoshia, AICP, Planning Program Administrator, County of Maui
Aaron Shinmoto, PE, Planning Program Administrator, County of Maui

bcc:  Chris Hart, Chris Hart & Partners, Inc.

104387.4 tdw wd
Mr. Christopher L. Hart, ASLA
Chris Hart & Partners, Inc.
1955 Main Street, Suite 200
Wailuku, Hawaii 96793

Dear Mr. Hart:

RE: Comments on Draft Environmental Assessment and Applications for a Community Plan Amendment and Change in Zoning for the site of the existing Nona Lani Cottages Temporary Vacation Rentals located at TMK: 3-9-041: 001, 455 South Kihei Road, Kihei, Island of Maui, Hawaii (EA 2006/0002) (CPA 2006/0001) (CIZ 2006/0001), and Notification of Expected Zoning Violation

The Maui Planning Department (Department) has reviewed the draft and has additional comments on the January 2007, revised submittal of the Draft Environmental Assessment (DEA) and applications for a Community Plan Amendment (CPA) and Change in Zoning (CIZ) you have provided for the site of the above-referenced development. We will start with comments and discussion about the status of the existing use relative to land use regulations because this will fairly broadly affect the DEA and other submittals and it also includes a notification of an expected zoning violation. This discussion can also generally fall within the context of the need for the submittal to meet the requirements of CIZ application checklist item: “7.b. A report addressing the following: Detailed land use history of the parcel which includes, but is not limited to former and existing State and County land use designations, violations and uses.” We will then follow with a few comments on other details of the revised submittal.

After the discussion of the existing land use, the revised application materials for the CPA and CIZ will be addressed below first after the land use discussion, and then the resubmitted DEA will be addressed. We acknowledge all of the revisions made in response to the Department’s February 17, 2006, letter of comments upon the original January 2006, CPA and CIZ applications submittal. Unfortunately, the preliminary DEA and the CPA and CIZ applications are still missing some information as discussed below. Based upon this, the Department has determined that the preliminary DEA and the application package does not yet represent an adequately complete package to continue processing of the DEA, and the CPA and CIZ applications at this time. Please prepare and submit two copies of a new, complete DEA and application package booklet incorporating revisions to address the comments below. Or you may also wish to discuss with an appropriate Department representative possible alternative approaches such as just submitting newly modified pages for further Department review.
The Department appreciates the additional information provided in the Land Use discussion of the DEA at Section III.A.1. However, information you have provided is not adequate to establish that the current transient use is legal non-conforming. Because it is still relevant, the associated comment from the Department's February 17, 2006, comment letter is repeated here: "The submittal provides some of [the] relevant the land use and permit history for the existing uses. However, please prepare and submit a history of building permits, plan designations and relevant allowed uses, as well as also zoning designations and relevant allowed uses. The current temporary vacation rental (TVR) use is not a permitted use under the present zoning. However, if you believe this use to be legal non-conforming, please submit the rationale and documentation for this, particularly including what the original uses of the structures were, substantiation of when the TVR use commenced, that is was permitted under zoning and any applicable plan designations at the time the use commenced, and that it was not discontinued for a year nor changed during the time when it was not a permitted use."

The present transient use of the property is not permitted within the current R-2 Residential zoning district applicable to the site. This was also not a permitted use within the Residential District when the first cottages were built in 1972. Please disclose in the Draft EA that the four 1972 building permits for identical structures read "To be occupied as Cottage", that the four 1973 permits for four more structures identical to the 1972 permits read "To be occupied as Single Family Dwelling " after "Cottage" was first typed in and then crossed out, and that the 1990 building permit reads "To be occupied as residence" with "Remarks: Four bedrooms/four baths/two lanais/sitting room/ deck."

Additional information and/or analysis will be necessary to establish that the present transient use is a legally existing non-conforming use. In this light, please provide the following: 1) When did the transient (as opposed to long-term rental) use of each of the 1972 units, the 1973 units, and the four 1990 extra bedrooms/bath first commence? If it was at the completion of their construction, please confirm this; 2) Was the site's zoning designation anything other than R-2 at these times, and if so what was it at these times?; and 3) How did the associated regulations applicable at these various times legally allow the commencement of the transient uses?

Unless you can establish that the zoning of the property was some designation other than the R-2 Residential District when some or all of the transient uses were established, the following regulatory history and conclusion applies to the subject site, its development and use. Since before the construction of the first cottages on the site in 1972, the County of Maui's (as well as most other jurisdictions') Zoning Ordinance has been structured such that unless a use is permitted by the ordinance, it is instead not allowed. Section 8-1.4(b)(1) of "The Comprehensive Zoning Ordinance for the County of Maui" from the "Permanent Ordinances of the County of Maui 1971" (1971 Zoning Ordinance) lists "Single family dwellings" as one of the "permitted uses" within the "Residential Districts". Section 8-1.2 of the 1971 Zoning Ordinance defines "Dwelling - A building or portion thereof designed exclusively for residential occupancy but not including hotels, tenements, boarding or lodging house as defined herein".

It appears that if, as is stated in the revised application materials, the units were immediately used for transient use at the time of their construction, this use would most likely have fallen with the 1971 definition of "Motel - A group of attached or detached buildings containing dwelling units or apartments, designed for or used temporarily by automobile tourists or transients, with garage attached or parking space conveniently located to each unit, including auto court or motor lodge." Such motels were allowed in the Apartment District, but not the Residential District.
Under the current zoning ordinance, now called "the Comprehensive Ordinance", "Single family dwellings" are still listed as one of the "permitted uses" within the "Residential Districts". Although in 1971 the zoning ordinance just defined "Dwelling", the current ordinance includes the following definition for "Dwelling, single-family "Single-family dwelling unit" means a building consisting of only one dwelling unit designed for or occupied exclusively by one family" and it defines "Dwelling unit" means a room or group of rooms together constituting an independent housekeeping unit for family and containing a single kitchen." Then it defines "Family" means an individual living alone or a group of two or more persons related by blood or marriage and their legal issue living together as a single housekeeping unit in a dwelling unit and in which two boarders, unrelated by blood may be living on a long-term residential basis. A family may also be defined as no more than five unrelated persons living together as a single housekeeping unit. In addition, eight or fewer persons who reside in residential facilities monitored and/or licensed by the state pursuant to chapter 45-15.3 of the Hawaii Revised Statutes shall constitute a family. Resident managers, supervisors or operator and operator's family shall not be included in the resident count."

The use on the site now falls within the following current definition of 'Hotel' or 'motel' means a transient vacation rental, other than a bed and breakfast home containing lodging or dwelling units." This is in part because "'Transient vacation rentals or use' means occupancy of a dwelling or lodging by transients for any period of less than one hundred and eighty days." Motels are no longer allowed within the Apartment District, but Hotels are allowed within the Hotel District.

Unless you can provide evidence to the contrary, we must conclude that the transient vacation rental use was not permitted when you indicate it was established, and it is not permitted now. We are not aware of any time during the interim when this use was an allowed use on this site. We do not yet see adequate support for your contention that the use is a legal non-conforming use. However, you are certainly welcome to provide adequate support if this is possible.

If you can not establish that the present transient use commenced legally, we must proceed with the understanding that it was instead established illegally, whether or not the applicant was aware of this at the time. In this case, the current TVR use will therefore constitute a zoning violation. Although violations are normally subject to immediate abatement through zoning enforcement procedures, this current development can temporarily take advantage of a County policy regarding TVRs which was in place at the time the CIZ and CPA applications were made. This is that the County was temporarily holding in abeyance zoning enforcement against TVRs not operating legally within the context of land use requirements, but which had prior to February 13, 2007, made substantially complete applications which would make them legal uses within the context of land use regulations if the applications(s) were to ultimately be approved. Therefore, unless you can somehow conclusively demonstrate that the current TVR uses were established and remain In legal operation today within the context of land use regulations, the TVR use will have a limited grace period during which enforcement proceedings will not be carried out. However, this grace period is anticipated to be of only a few months duration and then the TVR use and operations will be expected to have ceased unless and until they can be carried out in full compliance with the land use regulations then applicable to the site.
Mr. Christopher L. Hart, ASLA
May 25, 2007
Page 4

For the purposes of the application materials and the Draft EA, the baseline use(s) of the property for analysis within the application materials and Draft EA needs to include a use or set of uses with is/are currently legally permissible. If you cannot establish that the present transient use is in legal operation under land use regulations, a use or set of uses which is/are currently legally permissible, such as long term rentals (those of over 180 days), will need to be included in the application materials and Draft EA as an additional or substitute baseline. The impacts of proposed changes from a legal baseline use must then be addressed. In this case, the project description of the Draft EA would need to be amended to recognize the legal establishment of the TVR uses as a fundamental part of the proposed project, in addition to the requested CIZ and CPA amendments. The environmental assessment must then address the impacts of the establishment of the TVR use compared to a legal baseline, much as if the legal baseline were the current use and the TVR use was just now being proposed.

Furthermore, if you cannot establish that the present transient use is in legal operation under applicable land use regulations, the application package must include all land use applications, the approval of which would be necessary to legally establish the desired use on the site if the requested CIZ and CPA are ultimately granted. This would include at least an SMA Assessment application. If your applicant needs and wishes to establish the current use as a legal use in the Hotel District, you should analyze the consistency of the site development with standards of development applicable to that use in that District, and include within a revised project description any site or building modifications and/or identification of additional land use applications(s) and permitting needed to legally establish the use.

Other comments

The CPA and CIZ application packages include checklists entitled, respectively, "COMMUNITY PLAN AMENDMENT REQUIRED SUBMITTALS" and "GENERAL SUBMITTAL REQUIREMENTS". These other comments below are provided in the order of the items on the CPA checklist, and then on the CIZ checklist. As with the Department's February 17, 2006, letter of comments, where a checklist item is not listed below the submittal was adequate or the item was inapplicable.

CPA 4. Original and one (1) copy of the policies and objectives of the general plan applicable to the application and an analysis as to conformance to these policies and objectives.

Comment: The January 26, 2007, response letter states that Subchapter IV.B. has been revised to address the "Housing and Urban Design" section of the General Plan. However, we do not see this. When this is done, please be sure that the proposed change from a legal baseline use of the site is analyzed for consistency with the Housing and Urban Design Section. Should a legal baseline include use of the cottages for long-term rentals, such a baseline would seem likely to support well the Housing Objectives within the General Plan, and it would need to be demonstrated how and why a change from such a baseline would be in "conformance to these policies and objectives." A similar treatment should be provided for the relationship of the proposed action to the Housing policies within the Kihei-Makena Community Plan.
CIZ 7.a. A report addressing the following: Policies and objectives of the General Plan; the provisions of the community plan applicable to the application; the provisions of the applicable district; and an analysis of the extent to which the application, if granted, conforms to these provisions, objectives and provisions.

Comment: Please address how the current site development conforms to the development standards of the proposed new Hotel District zoning for the site.

CIZ 7.d. Analysis of the secondary impacts of the proposed use on surrounding uses which includes, but is not limited to increases in property value, property, housing, community services and facility needs, secondary jobs and employment generated and compatibility with surrounding uses. If applicable, affordable housing program and comments from the Department of Housing and Human Concerns of the County and other mitigation plans and comments from the respective governmental and community service agencies.

Comment: If the current transient use is not established as a legally existing nonconforming use, please address if, and if so how, the establishment of a legal transient use under the Hotel District, or the re-establishment of a legal use under the present R-2 District, would trigger the application of the Residential Workforce Housing Policy. In this eventuality, please also address how the establishment of a legal transient use within the Hotel District would affect the project site's contribution to the supply of long-term rental housing in the area if it's current legal use was as long-term rentals.

CIZ 13. Notarized Affidavit of Mailing of Notice and Application (Attachment B)

Comment: This obligation is to be fulfilled at the time of submission of an application, not at the time of acceptance of an application as complete. The application can not be considered complete for agency review and further processing unless and until the mailing of the Notice and Application has been successfully carried out and the notarized affidavit submitted.

We acknowledge the revisions made in response to the Department's February 17, 2006, pre-consultation comments upon the original January 2006, submittal. Given the need addressed above for the CPA and CIZ application materials to be supplemented, we are providing further pre-consultation comments in association with further needed application revisions.

1. Please update the "Contact" under Section 1.E. Accepting Authority to be: "Jeffrey S. Hunt, AICP";

2. If you can not establish that the present transient use commenced legally, a proposal for the legal establishment of transient use would be subject to all applicable rules and regulations including, but not limited to, the SMA Rules of the Maui Planning Commission and the County Building Code. In such an eventuality, please list within Section 1.G. the additional permits which would be necessary for such legal establishment;
3. The text of the "No Action" alternative in Section I.E.1. appears to include an acknowledgment that the maintenance of "the current inconsistencies between the zoning and community plan designations and the existing use" would "technically" prohibit the existing transient vacation rental use of the property. Resolution of a use's inconsistency with a community plan and zoning does is certainly desirable. However, it may not be required for an existing use unless such inconsistency was created when required permitting laws were not followed. Unless it can be established that the existing transient use is a legal use, since the "no action" alternative in the DEA is for "no action" on the requested CPA and CIZ, such alternative would more appropriately involve a legal use of the site which the owners would have in effect in the absence of approval of the requested CPA and CIZ; and

4. Please note that the Department's concurrence with the final two sentences in the Section VI. Findings and Conclusions is dependent upon satisfactory resolution of the other comments in this letter.

Thank you for the opportunity to comment. The Department appreciates your anticipated responsiveness to the above comments as we work together on your requests. When comments have been satisfactorily resolved, the Department will work with you further to commence upon the transmission of a final Draft EA to the Office of Environmental Quality Control (OEQC), and to other agencies and the Maui Planning Commission for their comments.

If you have any questions about the comments in this letter or desire any clarifications about the amendment request review or DEA process, please feel free to contact Mr. Jeffrey Dack, Staff Planner, at Jeffrey.dack@co.maui.hi.us, or at 270-6275.

Sincerely,

JEFFREY S. HUNT, AICP
Planning Director

JSH:JPD:bg
c: Colleen M. Suyama, Deputy Planning Director
Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, P.E., Planning Program Administrator, ZAED
Jeffrey P. Dack, AICP, Staff Planner
CPA/CIZ Project File
EA Project File
General File
K:\WP_DOCS\PLANNING\EA\2006\0002_NonsLaniCottages\AppReviewComments5-07Rev.wpd
October 12, 2007

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
#7005 3110 0002 6290 7780

Mr. David Kong
Nona Lani Cottages, LLC
Post Office Box 655
Kihei, Hawaii 96753

Dear Mr. Kong:

SUBJECT: COMMUNITY PLAN AMENDMENT/CHANGE IN ZONING
APPLICATION(S) FOR A TRANSIENT VACATION
RENTAL AND NOTICE OF WARNING

The Maui Planning Department (Department) is in receipt of the following applications:

- Project Name: Nona Lani Cottages
- ID Nos: CPA 2006/0001, CZ 2006/0001
- TMK: 3-9-041:001
- No. of Rooms: 12
- Lot Size: 2.27 acres
- Date Received: January 18, 2006
- State Land Use District: Urban
- Community Plan Region: Kihei-Makena
- Zoning District: R-2 Residential

As the applications were received by the Department prior to February 12, 2007, the transient vacation rental currently in operation will be provided a grace period but is still required to cease operation by January 1, 2008.

Please be advised that this letter also represents a Notice of Warning for the transient vacation rental use on the property. A copy of this letter is being forwarded to the Department’s Zoning Administration and Enforcement Division.
Mr. David Kong  
October 12, 2007  
Page 2

Should you require further clarification on your applications, please contact Jeffrey P. Dack, AICP, of the Planning department by email at jeffrey.dack@maucounty.gov or by phone at 270-6275. For enforcement questions, please contact Charles Villalon of the Zoning Administration and Enforcement Division by email at charles.villalon@maucounty.gov or by phone at 270-5277.

Sincerely,

[Signature]

JEFFERY S. HUNT, AICP  
Planning Director

cc: Raymond Cohe, Chris Hart and Partners  
Clayton I. Yoshida, AICP, Planning Program Administrator  
Aaron H. Shinmoto, PE, Planning Program Administrator (2)  
Charles Villalon, Zoning Inspector  
Jeffrey P. Dack, AICP, Staff Planner

JSH:JPD:by

Project Folder  
General Folder  
Pdf in S:\ALLCURRENT\VacationRentals\Letters\NonLett
November 7, 2007

Mr. Jeffrey S. Hunt, Director
Department of Planning
250 South High Street
Wailuku, HI 96793

Attention: Mr. Jeffrey Dack

Dear Mr. Hunt:

Re: Draft Environmental Assessment in support of Applications for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001)

Thank you for your letter dated October 18, 2007 regarding the Draft Environmental Assessment (EA) and applications for Community Plan Amendment and Change in Zoning for the subject project.

Based on our September 28, 2007 letter to you, we concluded that the existing Nona Lani Cottages, as a transient vacation rental (TVR), is an existing and nonconforming use. We acknowledge that the Department, on the contrary, concludes that the TVR use on the property “was not at any time a permitted use”. There are only two instances within the Draft EA where it is argued that the use is “existing and nonconforming” (pages 7 & 9). A note has been added on those pages to state the Department’s conclusion. In addition, on Page 3, we state that the Department does not recognize the Nona Lani Cottages as an existing and nonconforming use, and therefore the Department does not agree that major approvals are limited to a Community Plan Amendment and a Change in Zoning. We hope that these changes allay your fears that reviewers may overlook the conflicting conclusions.

In consideration of the foregoing, we are resubmitting one (1) complete document for your review. Please advise us on the number of additional copies required for agency review. If you have any questions regarding the above, please do not hesitate to call.
Mr. Jeffrey S. Hunt, Planning Director
RE: Draft Environmental Assessment for the Nona Lani Cottages
November 7, 2007
Page 2

Respectfully submitted,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

c: Ms. Cherlyn Kong
   Mr. David Kong
   Ms. Colleen Suyama
   Mr. Clayton Yoshida
   Mr. Tom Welch
Mr. Christopher L. Hart, ASLA
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793

Dear Mr. Hart:


The Maui Department of Planning (Department) has received your letter dated September 28, 2007, responding to the Department’s comment letter dated August 16, 2007. We respectfully disagree with the conclusions in your letter. As stated in our comment letters dated May 25, 2007, and August 16, 2007, the Department has concluded that the transient use of the subject property was not at any time a legally permitted use, and that it therefore cannot benefit from the status of a (legal) "nonconforming use" within the meaning of Title 19 of the Maui County Code. It also could not have therefore taken advantage of the State and County actions affecting otherwise legally operating transient vacation rental uses as listed in your letter.

The Department is concerned that in order for the proposal to benefit from a proper and valid environmental and project review, it must be clear to the parties reviewing a Draft Environmental Assessment (DEA) that the Department of Planning has concluded that the existing use was not ever a legally operating use under the Maui Zoning Ordinance. Although this would be evident to parties thoroughly reviewing the Department’s letters attached to the DEA, we fear that most reviewers would not be likely to dig so deeply into the appendices to a DEA as necessary to discover this. We therefore ask that, even though you and the Department continue to disagree as to the legal status of the existing use, you revise the DEA to clearly report the Department’s conclusion in this regards alongside the various points in the document where you refer to the use as “nonconforming” or otherwise comment upon your opinion as to its legal status. This clear disclosure is critical to a valid review by agencies and possibly other reviewers. In this same light, please also disclose on page three (3) that, although you may disagree, it is the Department’s conclusion that an SMA Assessment is required.

In light of your request for the Department to expedite the “opportunity to present this project to the Maui Planning Commission for their input,” please prepare the modest text changes to accomplish the disclosures requested above and submit just the modified
pages of the Draft Revised June 2007 Draft Environmental Assessment for the Department’s review. This submittal may be by any means you find most expeditious. We hope to then agree with you that the modified document is adequate for publication and review as a Draft Environmental Assessment.

Thank you for the opportunity to comment. The Department appreciates your anticipated responsiveness to the above comments as we work together on your requests.

If you have any questions about the comments in this letter or desire any clarifications about the amendment request review or DEA process, please feel free to contact Staff Planner Jeffrey Dack by email jeffrey.dack@mauicounty.gov or by phone at 270-6275.

Sincerely,

CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

xC:  Colleen M. Suyama, Deputy Planning Director
     Aaron H. Shinmoto, PE, Planning Program Administrator, ZAED (2)
     Jeffrey P. Dack, AICP, Staff Planner

CIS:JPD:by

CPA/CIZ Project File
EA Project File
General File

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September 28, 2007

Mr. Jeffrey S. Hunt, Director
Department of Planning
250 South High Street
Wailuku, HI 96793

Attention: Mr. Jeffrey Dack

Dear Mr. Hunt:

Re: Draft Environmental Assessment in support of Applications for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001).

Thank you for your letter dated August 16, 2007 regarding the Draft Environmental Assessment and applications for Community Plan Amendment and Change in Zoning for the subject project.

As we acknowledged previously, the existing Nona Lani Cottages, operating as transient vacation rentals (TVR), is not a permitted use within the R-2 Residential District, however here are pertinent facts that support the rationale that the existing use is “nonconforming”:

1. On May 20, 1980, the State of Hawaii adopted HRS 514E:5 which prohibits vacation rentals (leases less that 30 days) and timeshares state-wide in all counties, except areas zoned hotel. The statute also authorized counties to adopt zoning ordinances to broaden or narrow the applicable physical area of restriction. Paragraph (1) of HRS 514E:5 “grandfathers” existing TVRs:

   Existing time share units, time share plans, and transient vacation rentals are not impaired by the provisions of this section.

2. Effective on April 20, 1981, the County of Maui passed Ordinance No. 1134 which made TVRs more restrictive by redefining it as 180 days, however TVR use on the subject property is typically less than 30 days.

3. County of Maui Ordinance No. 1989 (1991) restricts TVR use only to properties in the hotel district, however the ordinance also “grandfathers” timeshares and TVRs “which were operating pursuant to and under law ... as of the effective date of the ordinance codified in this section ...”
Therefore, since the TVR use on the property began in 1973 and has been continuously operated as such since, the Nona Lani Cottages operating as a TVR in the residential district is an existing and nonconforming use.

In regards to your DEA Comments:

Page 3

In light of the above analysis, our position is that the current TVR use does have legal standing, therefore an SMA Assessment is not required.

Pages 23 & 26

The analyses of “Housing and Urban Design” of the General Plan and the Kihei-Makena Community Plan are highlighted on pages 23 and 26, respectively. Given the historical use and our position on the legality of the existing use, we feel that the conclusions are accurate. If you feel that they are not, then it is your prerogative to state that in your staff report and let the accepting agency, the Maui Planning Commission, decide whether the conclusions are accurate.

Page 29

The proposed action does not propose any additional units, and therefore will not trigger the Residential Workforce Housing Policy (Chapter 2.96, Maui County Code). While we recognize the prominence of affordable housing in the public consciousness, we do not feel that the insignificant number of existing units in this project, which have been used as vacation rentals for the last 34 years, could “substantially affect the economic or social welfare of the community or state.” If and when any development on the property that triggers Chapter 2.96 is proposed, the applicant will comply with its applicable requirements.

The environmental review process provides several opportunities to refine the document before being ultimately reviewed by the Maui County Council. We look forward to your cooperation in expediting our opportunity to present this project to the Maui Planning Commission for their input. If you have any questions regarding the above, please do not hesitate to call.

Respectfully submitted,

[Signature]

_for Christopher L. Hart, ASLA
President
Landscape Architect - Planner

CLH:rev
c: Ms. Cherlyn Kong
   Ms. Colleen Suyama
   Mr. Clayton Yoshida
Mr. Christopher L. Hart, ASLA
Chris Hart & Partners, Inc.
115 N. Market Street
Wailuku, Hawaii 96793

Dear Mr. Hart:

RE: Comments on Draft Revised June 2007 Draft Environmental Assessment in Support of Applications for a Community Plan Amendment and Change in Zoning for the Site of the Existing Nona Lani Cottages Temporary Vacation Rentals Located at TMK: 3-9-041:001, 455 South Kihei Road, Kihei, Island of Maui, Hawaii (EA 2006/0002), (CPA 2006/0001), (CIZ 2006/0001)

The Maui Department of Planning (Department) has reviewed, and has the following limited additional comments on the June 2007, revised submittal of the Draft Environmental Assessment (draft Revised DEA) you have provided in support of applications for a Community Plan Amendment (CPA) and Change in Zoning (CIZ) for the above-referenced site.

We acknowledge all of the revisions made in response to the Department’s May 25, 2007, letter of comments on the draft Revised DEA. For all but the final comment below, please prepare and submit two copies of proposed revisions to the draft Revised DEA. When these are resolved we hope to commence the transmission and review process for the DEA.

General Comment

The text of the draft Revised DEA refers to the current transient vacation rental use on the site variously as “existing and nonconforming” or “existing non-conforming” (p. 7, 8, et al). Please note that Maui County Zoning Ordinance Section 19.04.040 provides the following definition: “Nonconforming uses’ means any use of a structure or zoning lot which was previously lawful but which does not conform to the applicable use regulations of the district in which it is located, either on the effective date of the ordinance codified in this article or as a result of any subsequent amendment.” However, you have acknowledged “that the existing Nona Lani Cottages, operating as transient vacation rentals, is not a permitted use within the R-2 Residential District” and “the intent of the application is to correct past non-conformities.” Given the Zoning Ordinance’s use of the term “nonconforming” as referring to “any use... which was previously lawful,” the draft Revised DEA’s use of this term to refer to the existing site use is, at best, confusing and may, to some persons, be misleading. Please do not use the term as applying to the existing site use, or at least clarify that the term’s use is not intended to imply that the existing site land use was ever “previously lawful.”
DEA Comments

P.3 Section I.G. - Although it may not involve a "Major Land Use... Approval", to establish the current site land use as a legal use will involve a change in use because, from a technical standpoint at least, the current use does not have a legal standing as an existing use and so must be established as a legal use. A Special Management Area Assessment application will be required for this.

P.23 Section IV.B. and
P.26 Section IV.C.

In both Section III.A. Physical Environment and Section III.B Socio-Economic Environment you have accepted one of the suggestions from the Department's May 25, 2007, letter by "Using the 'legal baseline' of long term residential use". We note that the May 26, 2007, letter stated: "The January 26, 2007, response letter states that Subchapter IV.B. has been revised to address the 'Housing and Urban Design' section of the General Plan. However, we do not see this. When this is done, please be sure that the proposed change from a legal baseline use of the site is analyzed for consistency with the Housing and Urban Design Section. Should a legal baseline include use of the cottages for long-term rentals, such a baseline would seem likely to support well the Housing Objectives within the General Plan, and it would need to be demonstrated how and why a change from such a baseline would be in 'conformance to these policies and objectives'. A similar treatment should be provided for the relationship of the proposed action to the Housing policies within the Kihel-Makena Community Plan."

The brief "Analysis" section on page 23 of the draft Revised DEA regarding the "Housing and Urban Design" section of the General Plan states that "However, the Nona Lani Cottages is operated as a transient vacation rental, which is currently not a permitted use." It then concludes that "Therefore, these objectives do not apply." Similarly, The "Analysis" section on page 26 of the draft Revised DEA regarding the "Housing and Urban Design" section of the Kihel-Makena Community Plan states that "however, the Nona Lani Cottages is operated as a transient vacation rental, which would not currently be a permitted use." It then concludes that "Therefore, the goal of providing affordable homes does not apply." We do not believe that either conclusion is accurate. The draft Revised DEA at its page 6 now acknowledges that under the "no action" alternative "The applicant would have to cease operating as a transient vacation rental business and convert to a rental business that would comply with allowable uses within the R-2 Residential District." Since this "no action" alternative would support the General Plan Housing objectives listed in Section IV.B. and also very likely the Community Plan goal of providing affordable housing, but the proposed action would not, the General Plan objectives and Community Plan goal are applicable and their attainment would be impacted by the proposed action, particularly compared to the "no action" alternative.

P.29 Section V.F. - As discussed above, the proposed action is anticipated to impact the attainment of the General Plan and Community Plan objectives and goals to "provide a choice" or "a variety" of attractive, sanitary and affordable homes for residents, particularly compared to the "no action" alternative. Given the current prominence of affordable housing as an important area of public policy endeavors,
Mr. Christopher L. Hart, ASLA
August 16, 2007
Page 3

this may rise to the level of significance under Chapter 343 as an impact which
"substantially affects the economic or social welfare of the community or state." The
Department will look forward to comments from the public and agencies on the
Draft EA in arriving at a recommendation to the Maui Planning Commission in this
regards.

Thank you for the opportunity to comment. The Department appreciates your
anticipated responsiveness to the above comments as we work together on your requests.

If you have any questions about the comments in this letter or desire any
clarifications about the amendment request review or DEA process, please feel free to
contact Mr. Jeffrey Dack, Staff Planner, by email jeffrey.dack@mauicounty.gov or by
phone at 270-6275.

Sincerely,

[Signature]

JEFFREY S. HUNT, AICP
Planning Director

JSH:JPD:nt
c: Colleen M. Suyama, Deputy Planning Director
   Clayton I. Yoshida, AICP, Planning Program Administrator
   Aaron H. Shinmoto, PE, Planning Program Administrator, ZAED (2)
   Jeffrey P. Dack, AICP, Staff Planner
   CPA/CIZ Project File
   EA Project File
   General File
   K:\WP_DOCS\PLANNING\EA\2006\0002_NonaLaniCottages\App\EA_ReviewComments8-07.wpd
June 21, 2007

Mr. Jeffrey S. Hunt, Director
Department of Planning
250 South High Street
Wailuku, HI 96793

Attention: Mr. Jeffrey Dack

Dear Mr. Hunt:

Re: Draft Environmental Assessment in support of Applications for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001)

Thank you for your letter dated May 25, 2007 regarding the Draft Environmental Assessment and applications for Community Plan Amendment and Change in Zoning for the subject project. A meeting with Mr. Jeffrey Dack, Ms. Colleen Suyama, Mr. Clayton Yoshida, Mr. Raymond Cabebe, Ms. Cherlyn Kong, and myself was held on June 6, 2007 and the responses also reflect the discussion at that meeting. We would like to state up front that the existing Nona Lani Cottages, operating as transient vacation rentals, is not a permitted use within the R-2 Residential District and we have never contended that it was. These are the relevant facts:

1. The units were used as short-term rentals as soon as they were constructed in 1972 & 1973.

2. The zoning in 1972 was R-2 Residential (7,500 s.f. minimum lot size).

3. The regulations at the time did not define transient vacation rental uses. SMA rules did not exist and building permits to construct the structures were obtained by complying with all applicable regulations.

The intent of the applicant is to correct past non-conformities and make the existing use permitted within the (H-1) Hotel District. We have provided all requested additional information and revisions as noted here and highlighted in the attached draft. The following responses also address other issues and omissions:

Building permit notation disclosures. The current Maui County Code includes in its definition of “Subdivision” ($18.04.470) that the construction of four or more dwelling units on a lot, parcel, or site shall be subject to the provisions of this title (Title 18, Subdivisions), however The Permanent Ordinances of the County of Maui...
1971 in effect at that time did not include that definition. Both the current and 1971 Comprehensive Zoning Ordinance allowed a single family dwelling at a rate of one dwelling for every 7,500 square feet within (R-2) Residential District zoning. The subject property has an area of 2.27 acres (98,881 square feet) which would allow a maximum of thirteen (13) dwellings to be constructed.

**Regulatory history.** A definition of “cottage” does not exist in either versions of the County Code. The cottages were designed as dwellings and did not fall into the definitions for hotel, tenements, boarding, or lodging house. All structures on the property have been permitted according to regulations in effect at the time of construction.

**Motel Use.** We acknowledge that the existing use is most closely compatible with the definition for “motel” in the 1971 Ordinances. The 1985 revision to the Kihei-Makena Community Plan designated the parcel as Multi-family use in order to establish consistency with the existing use since “motel” use was an allowable use within the Apartment district at that time. In 1989, “motel” use was deleted from the Apartment district.

**Transient vacation rental.** When the short-term use was established on the property, the County did not have a definition for “transient vacation rental” (TVR). Please note that the current use was established 34 years ago and no violation citation has ever been filed against the property owner. The current applications were submitted in January, 2006 for the purpose of bringing the historical use into conformance.

**Baseline use.** Although using a “legal baseline” is not rooted in historical reality, a comparison is provided in conjunction with the existing use. The “legal baseline” to be used is “long term residential” use (longer than 180 days) which is allowable in both Residential and Apartment districts. Being that this is a “legal” scenario and not the “actual”, the impacts of the requested Community Plan Amendment (CPA) and Change in Zoning (CIZ) to Hotel use are more accurately reflected in comparisons to the existing and nonconforming use, and would be more relevant than the hypothetical scenario because the guest cottages are 396 square feet and not necessarily conducive to “long term residential” use. The proposed actions (CPA & CIZ) within the Special Management Area (SMA) could potentially allow a “change in density”, but the entitlement actions do not cause it. Therefore, an SMA Assessment application would not be necessary. The applicant will comply with all SMA and building requirements, if and when further development of the property is proposed.

**CPA 4.** An analysis of the “Housing and Urban Design” sections of the General Plan and Kihei-Community Plan is provided (See: IV.B & IV.C).

**CIZ 7.a.** An analysis of conformance of the current site to Hotel District zoning is provided (See: IV.D).
CIZ 7.d. Although the existing use is existing and nonconforming, the proposed entitlement action does not trigger compliance with the Residential Workforce Housing Policy since no new units are being proposed or constructed. In any case, the existing structures would be exempt since building permit applications for the structures were submitted prior to the effective date of Chapter 2.96. Since the project site does not currently provide long-term rentals it would be irrelevant to address the effects of the proposed actions on the supply of long-term rentals.

CIZ 13. The notices of application will be sent out to owners and lessees of properties within 500 feet of the subject property. A notarized affidavit of mailing will be provided.

Additional revisions:

1. The Accepting Authority Contact will be updated.

2. The necessary approvals for the proposed action (Community Plan Amendment) which triggers the EA, does not include any permits for the establishment of a "legal" use. The approval of the requested action would establish the existing use as a permitted "legal" use in the (H-1) Hotel District. An SMA Use Permit is listed as a major approval required for any new development on the property.

3. The "No Action" alternative is revised to acknowledge that the existing use would have to be changed to some kind of legal use of the property.

4. It is acknowledged that the Department’s concurrence is dependent on the resolution of the issues in your May 25, 2007 letter.

We assume that the foregoing response addresses any remaining issues and that acceptance for processing is warranted. If you have any questions regarding the above, please do not hesitate to call.

Respectfully submitted,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

attachment

cc: Ms. Cherlyn Kong
    Ms. Colleen Suyama
    Mr. Clayton Yoshida
Mr. Christopher L. Hart, ASLA
Chris Hart & Partners, Inc.
1955 Main Street, Suite 200
Walluku, Hawaii 96793

Dear Mr. Hart:

RE: Comments on Draft Environmental Assessment and Applications for a Community Plan Amendment and Change in Zoning for the site of the existing Nona Lani Cottages Temporary Vacation Rentals located at TMK: 3-9-041: 001, 455 South Kihei Road, Kihei, Island of Maui, Hawaii (EA 2006/0002) (CPA 2006/0001) (CIZ 2006/0001), and Notification of Expected Zoning Violation

The Maui Planning Department (Department) has reviewed and has additional comments on the January 2007, revised submittal of the Draft Environmental Assessment (DEA) and applications for a Community Plan Amendment (CPA) and Change in Zoning (CIZ) you have provided for the site of the above-referenced development. We will start with comments and discussion about the status of the existing use relative to land use regulations because this will fairly broadly affect the DEA and other submittals and it also includes a notification of an expected zoning violation. This discussion can also generally fall within the context of the need for the submittal to meet the requirements of CIZ application checklist item: “7.b. A report addressing the following: Detailed land use history of the parcel which includes, but is not limited to former and existing State and County land use designations, violations and uses." We will then follow with a few comments on other details of the revised submittal.

After the discussion of the existing land use, the revised application materials for the CPA and CIZ will be addressed below first after the land use discussion, and then the resubmitted DEA will be addressed. We acknowledge all of the revisions made in response to the Department’s February 17, 2006, letter of comments upon the original January 2006, CPA and CIZ applications submittal. Unfortunately, the preliminary DEA and the CPA and CIZ applications are still missing some information as discussed below. Based upon this, the Department has determined that the preliminary DEA and the application package does not yet represent an adequately complete package to continue processing of the DEA, and the CPA and CIZ applications at this time. Please prepare and submit two copies of a new, complete DEA and application package booklet incorporating revisions to address the comments below. Or you may also wish to discuss with an appropriate Department representative possible alternative approaches such as just submitting newly modified pages for further Department review.
The Department appreciates the additional information provided in the Land Use discussion of the DEA at Section III.A.1. However, information you have provided is not adequate to establish that the current transient use is legal non-conforming. Because it is still relevant, the associated comment from the Department's February 17, 2006, comment letter is repeated here: "The submittal provides some of [the] relevant the land use and permit history for the existing uses. However, please prepare and submit a history of building permits, plan designations and relevant allowed uses, as well as also zoning designations and relevant allowed uses. The current temporary vacation rental (TVR) use is not a permitted use under the present zoning. However, if you believe this use to be legal non-conforming, please submit the rationale and documentation for this, particularly including what the original uses of the structures were, substantiation of when the TVR use commenced, that is was permitted under zoning and any applicable plan designations at the time the use commenced, and that it was not discontinued for a year nor changed during the time when it was not a permitted use."

The present transient use of the property is not permitted within the current R-2 Residential zoning district applicable to the site. This was also not a permitted use within the Residential District when the first cottages were built in 1972. Please disclose in the Draft EA that the four 1972 building permits for identical structures read "To be occupied as Cottage", that the four 1973 permits for four more structures identical to the 1972 permits read "To be occupied as Single Family Dwelling" after "Cottage" was first typed in and then crossed out, and that the 1990 building permit reads "To be occupied as residence" with "Remarks: Four bedrooms/four baths/two lanais/sitting room/deck."

Additional information and/or analysis will be necessary to establish that the present transient use is a legally existing non-conforming use. In this light, please provide the following: 1) When did the transient (as opposed to long-term rental) use of each of the 1972 units, the 1973 units, and the four 1990 extra bedrooms/bath first commence? If it was at the completion of their construction, please confirm this; 2) Was the site's zoning designation anything other than R-2 at these times, and if so what was it at these times; and 3) How did the associated regulations applicable at these various times legally allow the commencement of the transient uses?

Unless you can establish that the zoning of the property was some designation other than the R-2 Residential District when some or all of the transient uses were established, the following regulatory history and conclusion applies to the subject site, its development and use. Since before the construction of the first cottages on the site in 1972, the County of Maui's (as well as most other jurisdictions') Zoning Ordinance has been structured such that unless a use is permitted by the ordinance, it is instead not allowed. Section 8-1.4(b)(1) of "The Comprehensive Zoning Ordinance for the County of Maui" from the "Permanent Ordinances of the County of Maui 1971" (1971 Zoning Ordinance) lists "Single family dwellings" as one of the "permitted uses" within the "Residential Districts". Section 8-1.2 of the 1971 Zoning Ordinance defines "Dwelling - A building or portion thereof designed exclusively for residential occupancy but not including hotels, tenements, boarding or lodging house as defined herein".

It appears that if, as is stated in the revised application materials, the units were immediately used for transient use at the time of their construction, this use would most likely have fallen with the 1971 definition of "Motel - A group of attached or detached buildings containing dwelling units or apartments, designed for or used temporarily by automobile tourists or transients, with garage attached or parking space conveniently located to each unit, including auto court or motor lodge." Such motels were allowed in the Apartment District, but not the Residential District.
Under the current zoning ordinance, now called "the Comprehensive Ordinance", "Single family dwellings" are still listed as one of the "permitted uses" within the "Residential Districts". Although in 1971 the zoning ordinance just defined "Dwelling", the current ordinance includes the following definition for "Dwelling, single-family 'Single-family dwelling unit' means a building consisting of only one dwelling unit designed for or occupied exclusively by one family" and it defines "Dwelling unit' means a room or group of rooms connected together constituting an independent housekeeping unit for family and containing a single kitchen." Then it defines "'Family' means an individual living alone or a group of two or more persons related by blood or marriage and their legal issue living together as a single housekeeping unit in a dwelling unit and in which two boarders, unrelated by blood may be living on a long-term residential basis. A family may also be defined as no more than five unrelated persons living together as a single housekeeping unit. In addition, eight or fewer persons who reside in residential facilities monitored and/or licensed by the state pursuant to chapter 46-16.3 of the Hawaii Revised Statutes shall constitute a family. Resident managers, supervisors or operator and operator's family shall not be included in the resident count."

The use on the site now falls within the following current definition of 'Hotel' or 'motel' means a transient vacation rental, other than a bed and breakfast home containing lodging or dwelling units." This is in part because "'Transient vacation rentals or use' means occupancy of a dwelling or lodging unit by transients for any period of less than one hundred and eighty days." Motels are no longer allowed within the Apartment District, but Hotels are allowed within the Hotel District.

Unless you can provide evidence to the contrary, we must conclude that the transient vacation rental use was not permitted when you indicate it was established, and it is not permitted now. We are not aware of any time during the interim when this use was an allowed use on this site. We do not yet see adequate support for your contention that the use is a legal non-conforming use. However, you are certainly welcome to provide adequate support if this is possible.

If you can not establish that the present transient use commenced legally, we must proceed with the understanding that it was instead established illegally, whether or not the applicant was aware of this at the time. In this case, the current TVR use will therefore constitute a zoning violation. Although violations are normally subject to immediate abatement through zoning enforcement procedures, this current development can temporarily take advantage of a County policy regarding TVRs which was in place at the time the CIZ and CPA applications were made. This is that the County was temporarily holding in abeyance zoning enforcement against TVRs not operating legally within the context of land use requirements, but which had prior to February 13, 2007, made substantially complete applications which would make them legal uses within the context of land use regulations if the applications(s) were to ultimately be approved. Therefore, unless you can somehow conclusively demonstrate that the current TVR uses were established and remain in legal operation today within the context of land use regulations, the TVR use will have a limited grace period during which enforcement proceedings will not be carried out. However, this grace period is anticipated to be of only a few months duration and then the TVR use and operations will be expected to have ceased unless and until they can be carried out in full compliance with the land use regulations then applicable to the site.
Mr. Christopher L. Hart, ASLA
May 25, 2007
Page 4

For the purposes of the application materials and the Draft EA, the baseline use(s) of the property for analysis within the application materials and Draft EA needs to include a use or set of uses with is/are currently legally permissible. If you can not establish that the present transient use is in legal operation under land use regulations, a use or set of uses which is/are currently legally permissible, such as long term rentals (those of over 180 days), will need to be included in the application materials and Draft EA as an additional or substitute baseline. The impacts of proposed changes from a legal baseline use must then be addressed. In this case, the project description of the Draft EA would need to be amended to recognize the legal establishment of the TVR uses as a fundamental part of the proposed project, in addition to the requested CIZ and CPA amendments. The environmental assessment must then address the impacts of the establishment of the TVR use compared to a legal baseline, much as if the legal baseline were the current use and the TVR use was just now being proposed.

Furthermore, if you can not establish that the present transient use is in legal operation under applicable land use regulations, the application package must include all land use applications, the approval of which would be necessary to legally establish the desired use on the site if the requested CIZ and CPA are ultimately granted. This would include at least an SMA Assessment application. If your applicant needs and wishes to establish the current use as a legal use in the Hotel District, you should analyze the consistency of the site development with standards of development applicable to that use in that District, and include within a revised project description any site or building modifications and/or identification of additional land use applications(s) and permitting needed to legally establish the use.

Other comments

The CPA and CIZ application packages include checklists entitled, respectively, "COMMUNITY PLAN AMENDMENT REQUIRED SUBMITTALS" and "GENERAL SUBMITTAL REQUIREMENTS". These other comments below are provided in the order of the items on the CPA checklist, and then on the CIZ checklist. As with the Department's February 17, 2006, letter of comments, where a checklist item is not listed below the submittal was adequate or the item was inapplicable.

CPA 4. Original and one (1) copy of the policies and objectives of the general plan applicable to the application and an analysis as to conformance to these policies and objectives.

Comment: The January 26, 2007, response letter states that Subchapter IV.B. has been revised to address the "Housing and Urban Design" section of the General Plan. However, we do not see this. When this is done, please be sure that the proposed change from a legal baseline use of the site is analyzed for consistency with the Housing and Urban Design Section. Should a legal baseline include use of the cottages for long-term rentals, such a baseline would seem likely to support well the Housing Objectives within the General Plan, and it would need to be demonstrated how and why a change from such a baseline would be in "conformance to these policies and objectives." A similar treatment should be provided for the relationship of the proposed action to the Housing policies within the Kihei-Makena Community Plan.
CIZ 7.a. A report addressing the following: Policies and objectives of the General Plan; the provisions of the community plan applicable to the application; the provisions of the applicable district; and an analysis of the extent to which the application, if granted, conforms to these provisions, objectives and provisions.

Comment: Please address how the current site development conforms to the development standards of the proposed new Hotel District zoning for the site.

CIZ 7.d. Analysis of the secondary impacts of the proposed use on surrounding uses which includes, but is not limited to increases in property value, property, housing, community services and facility needs, secondary jobs and employment generated and compatibility with surrounding uses. If applicable, affordable housing program and comments from the Department of Housing and Human Concerns of the County and other mitigation plans and comments from the respective governmental and community service agencies.

Comment: If the current transient use is not established as a legally existing nonconforming use, please address if, and if so how, the establishment of a legal transient use under the Hotel District, or the re-establishment of a legal use under the present R-2 District, would trigger the application of the Residential Workforce Housing Policy. In this eventuality, please also address how the establishment of a legal transient use within the Hotel District would affect the project site’s contribution to the supply of long-term rental housing in the area if its current legal use was as long-term rentals.

CIZ 13. Notarized Affidavit of Mailing of Notice and Application (Attachment B)

Comment: This obligation is to be fulfilled at the time of submission of an application, not at the time of acceptance of an application as complete. The application can not be considered complete for agency review and further processing unless and until the mailing of the Notice and Application has been successfully carried out and the notarized affidavit submitted.

We acknowledge the revisions made in response to the Department’s February 17, 2006, pre-consultation comments upon the original January 2006, submittal. Given the need addressed above for the CPA and CIZ application materials to be supplemented, we are providing further pre-consultation comments in association with further needed application revisions.

1. Please update the "Contact" under Section I.E. Accepting Authority to be: "Jeffrey S. Hunt, AICP";

2. If you can not establish that the present transient use commenced legally, a proposal for the legal establishment of transient use would be subject to all applicable rules and regulations including, but not limited to, the SMA Rules of the Maui Planning Commission and the County Building Code. In such an eventuality, please list within Section I.G, the additional permits which would be necessary for such legal establishment;
3. The text of the “No Action” alternative in Section I.E.1. appears to include an acknowledgment that the maintenance of “the current inconsistencies between the zoning and community plan designations and the existing use” “would ‘technically’ prohibit the existing transient vacation rental use of the property”. Resolution of a use’s inconsistency with a community plan and zoning does is certainly desirable. However, it may not be required for an existing use unless such inconsistency was created when required permitting and laws were not followed. Unless it can be established that the existing transient use is a legal use, since the “no action” alternative in the DEA is for “no action” on the requested CPA and CIZ, such alternative would more appropriately involve a legal use of the site which the owners would have in effect in the absence of approval of the requested CPA and CIZ; and

4. Please note that the Department’s concurrence with the final two sentences in the Section VI. Findings and Conclusions is dependent upon satisfactory resolution of the other comments in this letter.

Thank you for the opportunity to comment. The Department appreciates your anticipated responsiveness to the above comments as we work together on your requests. When comments have been satisfactorily resolved, the Department will work with you further to commence upon the transmission of a final Draft EA to the Office of Environmental Quality Control (OEQC), and to other agencies and the Maui Planning Commission for their comments.

If you have any questions about the comments in this letter or desire any clarifications about the amendment request review or DEA process, please feel free to contact Mr. Jeffrey Dack, Staff Planner, at j Jeffrey.dack@co.mau i.hi. us, or at 270-6275.

Sincerely,

JEFFREY S. HUNT, AICP
Planning Director

c: Colleen M. Suyama, Deputy Planning Director
Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shimamoto, P.E., Planning Program Administrator, ZAED
Jeffrey P. Dack, AICP, Staff Planner
CPA/CIZ Project File
EA Project File
General File
K:\WP_DOCS\PLANNING\EA\2006\0002_NonaLaniCottages\AppReviewComments5-07Rev.wpd
Attention: Mr. Jeffrey Dack, Staff Planner

Dear Mr. Hunt:

Re: Applications for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001)

In response to the Planning Department's letter dated February 17, 2006 regarding the Community Plan Amendment (CPA) and Change In Zoning (CIZ) for the subject project, we offer the following response to comments enumerated in your letter:

• **CPA**

  2. The "Articles of Organization of Nona Lani Cottages LLC" are made a part of Appendix "A".

  3. The 500 foot radius map was created with the County of Maui's Accela GIS website. The map has been revised to include a graphic scale.

  4. Subchapter IV.B, "General Plan of the County", has been revised to address the objectives and policies of the "Visitor Industry" and the "Housing and Urban Design" sections.

  6. A mylar CPA map is submitted with this letter.

  7. See separate letter addressing the comments on the Draft Environmental Assessment.

• **CIZ**

  7. The CIZ and CPA applications are submitted with the Draft Environmental Assessment which addresses items "a" through "p".

    a. Subchapters IV.B and IV.C analyzes the provisions of the General Plan and the Kihei-Makena Community Plan applicable to the subject applications.
b. Subchapter III.A, paragraph 1, has been appended with additional information regarding the history of the property.

c. See III.A.7.
d. See III.B.1.
e. See III.D.1.
f. Not applicable.
g. See III.D.3.
h. See III.D.2.
i. See III.C.3.
j. See III.A.4.
l. No development is proposed at this time. The Kihei Community Association will be consulted when plans are developed.
m. No development is proposed at this time.
n. See III.B.2.
o. Not applicable.
p. Not applicable.

13. The notarized affidavit of mailing of Notice and Application will be submitted under separate cover upon acceptance of the Change in Zoning application by the Planning Department.

14. A mylar CIZ map of the property is submitted with this letter.

(Note: A revised copy of the consolidated application is submitted for your review.)

We assume that the foregoing response addresses any remaining issues and that acceptance of our consolidated application for processing is warranted. If you have any questions regarding the above, please do not hesitate to call.

Respectfully submitted,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

CLH:re
attachments

c: Ms. Cherlyn Kong
Mr. Chris Hart  
Chris Hart & Partners, Inc.  
1955 Main Street, Suite 200  
Wailuku, Hawaii 96793  

Dear Mr. Hart:

RE: Comments Upon Applications for a Community Plan Amendment and Change in Zone for the site of the existing Nona Lani Cottages Temporary Vacation Rentals located at TMK: 3-9-041: 001, at 455 South Kihei Road, Kihei, Island of Maui, Hawaii (EA 2006/0002) (CPA 2006/0001) (CIZ 2006/0001)

The Maui Planning Department (Department) has reviewed and has the following comments upon the applications for a Community Plan Amendment (CPA) and Change in Zoning (CIZ) you have submitted for the site of the above referenced development. Unfortunately, the CPA and CIZ applications are missing a series of items as discussed below. Based upon this, the Department has determined that the application package does not represent an adequately complete package to continue processing of the CPA and CIZ applications at this time. Please prepare and submit two copies of a new, complete application package booklet incorporating revisions to address the comments below.

The CPA and CIZ application packages includes checklists entitled, respectively, “COMMUNITY PLAN AMENDMENT REQUIRED SUBMITTALS” and “GENERAL SUBMITTAL REQUIREMENTS”. The comments below are provided in the order of the items on the CPA checklist, and then on the CIZ checklist. Where a checklist item is not listed below, the submittal was adequate or the item was inapplicable.

CPA 2. A notarized letter of authorization from the legal owner if the applicant is not the owner.

Comment: Please provide evidence of the application signatory’s authorization to sign the application on behalf of the applicant LLC.

CPA 3. List of owners and lessees of real property within a 500 feet radius of the subject parcel should be obtained from the most current available list at the Maui County Department of Finance, Real Property Tax Division. This list should include the tax map key numbers and the names and addresses of all owners, lessees, and members of the Board of Directors or managing agents to be notified, including a map drawn to scale, clearly defining the 500 feet notification boundary and the parcels affected.
Comment: No scale is shown on the map. Please provide evidence verifying that the line encircling the site is at 500 feet from the site's boundaries.

CPA 4. Original and one (1) copy of the policies and objectives of the general plan applicable to the application and an analysis as to conformance to these policies and objectives.

Comment: Because the application is to change from residential housing designations to hotel designations, both the Visitor Industry and the Housing and Urban Design sets of objectives and policies are “applicable to the application”. Please provide “an analysis as to conformance to these policies and objectives” by the application, for both the Visitor Industry and the Housing and Urban Design General Plan sections.

CPA 6. Legal description and mylar map drawn to scale of the subject property in a format prescribed by the department of planning.

Comment: No mylar map has been submitted. Please do so in a format as shown in a map attachment to the Department’s application package.

CPA 7. Original and one (1) copy of a draft environmental assessment including, but not limited to, the following:

a. Identification of applicant or proposing agency;
b. Identification of approving agency which shall be the department of planning;
c. Identification of agencies consulted;
d. General description of the action’s technical, economic, social, and environmental characteristics;
e. Summary description of the affected environment, including suitable and adequate location and site map;
f. Identification and summary of major positive and negative impacts and alternatives considered, if any;
g. Proposed mitigation measures, if any;
h. Any other information the department may require in its consideration of every phase of the proposed action, the expected consequences, both primary and secondary, and the cumulative as well as the short term and long-term effects of the action in making a determination; and
i. Compliance with Chapter 200, Title 11, State Department of Health rules.

Comments: See separate letter of Preconsultation Comments from the Department on the Draft Environmental Assessment (EA).

CIZ 7. (which is also a requirement of the Community Plan Amendment application) - A report addressing the following: [items 7.a. through 7.p. in the CIZ General Submittal Requirements checklist]
Comments: At present, neither the CIZ nor the CPA application is accompanied by such a report. As such, both of these applications are incomplete. However, we will offer a few comments now which should assist you in preparing a report which we are hopeful will be adequate and responsive to the needs associated with the application submittal requirements.

As is addressed within the separate letter of Preconsultation Comments on the Draft EA, the appropriate basis for assessment and analysis of these applications is the ultimate maximum development which could be allowed upon this site under the proposed new community plan and zoning designations, not just the existing development on the site. All of the report items in Section 7. of the CIZ submittal checklist must be addressed thoroughly and comprehensively for this maximum potential level of development.

CIZ 7.a. A report addressing the following: Policies and objectives of the General Plan; the provisions of the community plan applicable to the application; the provisions of the applicable district; and an analysis of the extent to which the application, if granted, conforms to these provisions, objectives and provisions.

Comment: Because the application is to change the site from residential housing to hotel designations, both the set of plan provisions (such as objectives and policies) which are served by the current designations as well as those which would be supported by the proposed new designations need to be identified and analyzed as to the impacts of changing the current designations. Also, since the applications are for plan and zoning designation changes, not development at this time, the effects upon these plan provisions must be analyzed as they would result from the maximum potential development under the proposed new hotel designations and the current residential designations, respectively.

CIZ 7.b. A report addressing the following: Detailed land use history of the parcel which includes, but is not limited to former and existing State and County land use designations, violations and uses.

Comment: The submittal provides some of relevant the land use and permit history for the existing uses. However, please prepare and submit a history of building permits, plan designations and relevant allowed uses, as well as also zoning designations and relevant allowed uses. The current temporary vacation rental (TVR) use is not a permitted use under the present zoning. However, if you believe this use to be legal non-conforming, please submit the rationale and documentation for this, particularly including what the original uses of the structures were, substantiation of when the TVR use commenced, that is, was permitted under zoning and any applicable plan designations at the time the use commenced, and that it was not discontinued for a year nor changed during the time when it was not a permitted use.
CIZ 13. Notarized Affidavit of Mailing of Notice and Application (Attachment B)

Comment: We do not find this as part of the application package.

CIZ 14. For Change in Zoning, the following additional information is required: b. Mylar map drawn to scale (8½" x 14" format) of the subject parcel (Attachment C)

Comment: We do not find this as part of the application package. Please submit one in a format as shown in a map attachment to the Department's application package.

Thank you for the opportunity to comment. The Department appreciates your anticipated responsiveness to the above comments as we work together on your requests. Please provide a revised submittal or a status update on the CPA and CIZ applications within 30 days of this letter. Failure to do so may cause the applications to be closed.

If you have any questions about the comments in this letter or desire any clarifications about the amendment request review process, please feel free to contact Mr. Jeffrey Dack, AICP, Staff Planner, at 270-6275.

Sincerely,

MICHAEL W. FOLEY
Planning Director

MWF:JPD:sec

C: Wayne Boteilho, Deputy Planning Director
   Clayton Yoshida, AICP, Planning Program Administrator
   Kivette Caigoy, Environmental Planner
   Jeffrey Dack, Staff Planner
   SMA Project File
   EA Project File
   General File

K:\WP_DOCS\PLANNING\EA\2006\0002_NonalaniCottages\AppReview\Comments.wpd
January 26, 2007

Mr. Jeffrey S. Hunt, Director
Department of Planning
250 South High Street
Wailuku, HI 96793

Attention: Environmental Planner

Dear Mr. Hunt:

Re: Draft Environmental Assessment in support of Applications for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001)

In response to the Planning Department's letter dated February 17, 2006 regarding the Draft Environmental Assessment for the subject project, we offer the following response to comments as enumerated in your letter:

1. Full build out potential. The Draft EA has been revised to include an analysis of the potential impacts of a full build-out scenario.

2. Cultural Impact Study. A new section is added to the Draft EA (Subchapter III.A, Section 8, "Cultural Resources") to address impacts of the proposed action and the full build-out scenario.

3. Significance criteria in relation to full build out. Chapter V has been added to the Draft EA to address the significance criteria in relation to the proposed action.

4. Typographical errors. The typographical errors have been corrected.

5. Figure No. 11. The cottages on the Site Plan have been labeled.

6. List of permits. Subchapter I.G has been added to the Draft EA listing the permits for the proposed action and for any future development on the property.

A revised copy of the Draft Environmental Assessment is submitted for your review.
We assume that the foregoing response addresses any remaining issues and that acceptance for processing is warranted. If you have any questions regarding the above, please do not hesitate to call.

Respectfully submitted,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

C.L.H:re

attachments

c: Ms. Cherlyn Kong
   Mr. Jeffrey Dack
February 17, 2006

Mr. Chris Hart  
Chris Hart & Partners  
1955 Main Street, Suite 200  
Wailuku, HI 96793

Dear Mr. Hart:

RE: Preconsultation Comments in preparation of a Draft Environmental Assessment for the Proposed Land Use Amendments for the Nona Lani Cottages located at TMK: 3-9-041: 001, at 455 South Kihei Road, Kihei, Island of Maui, Hawaii (EA 2006/0002) (CPA 2006/0001) (CIZ 2006/0001)

The Maui Planning Department (Department) provides the following preconsultation comments for the proposed Community Plan Amendment from Multi-Family to Hotel, and Change in Zoning from R-2, Residential District to H-1, Hotel District:

1. Although the Applicant currently has no intentions of additional development, the Draft EA, in its entirety, should be revised to describe the full potential build-out scenario of the requested land use amendments.

Based on the foregoing and assuming full build-out potential, the following technical studies or analysis should be prepared and included in the Draft EA:

a. Traffic Impact Analysis  
b. Water usage  
c. Sewer usage  
d. Drainage  
e. View analysis

2. Provide a Cultural Impact Study that includes sources of information (written and verbal) used to derive conclusions.
3. Provide a discussion of the proposed project considering full build-out potential relative to the Significance Criteria as defined in Section 11-200-12, HAR.

4. Please note the following typographical errors:
   a. Paragraph 2 of Section 1.B should state “...Change in Zoning.”
   b. Paragraph III.7 should state “...nearby Maui Lu Hotel.”

5. Label the cottages on Figure 11.

6. Provide a list of all Federal, State, and County permits required.

Upon resolution of the foregoing, please submit one (1) copy of the Draft EA to the Department for further review. Please note that the Department requires a copy 10 calendar days prior to anticipated OEQC Submission Deadlines.

Thank you for your cooperation. Should you require further clarification, please contact Ms. Kivette Caigoy, Environmental Planner, at 270-7735.

Sincerely,

[Signature]

MICHAEL W. FOLEY
Planning Director

MWF:KAC:sec

Cc: Wayne Boteilho, Deputy Planning Director
    Clayton I Yoshida, Planning Program Administrator
    Kivette Caigoy, Environmental Planner
    Jeffrey Dack, Staff Planner
    EA Project File
    General File
    K:\WP_DOCS\PLANNING\EA\2006\0002\_NonaLaniCottages\praconsultation.wpd
APPENDIX F
Agency Comments & Responded
February 17, 2009

Mr. Jeffrey K. Eng, Director
Department of Water Supply
200 South High Street
Wailuku, Hawaii 96793

Dear Mr. Eng:

RE: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: (2) 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001).

Thank you for your February 10, 2009 letter in response to the Draft Environmental Assessment in support of the Community Plan Amendment and Change in Zoning applications for the subject project. Following are responses to your comments:

Source Availability and Consumption. The applicant acknowledges that the project is served by the Central Maui System with an existing 1-inch meter. Please note that the projected potable demand for the hypothetical “full build-out” is 28,000 gallons per day (gpd) which approximates your estimated potential of 30,000 gpd. The applicant acknowledges that the current usage is approximately 8,000 gpd which is not expected to increase since no development is proposed at this time.

System Infrastructure. Please be reminded that the Nona Lani Cottages has been in operation since 1972. Since no development is proposed, we do not feel that consultation with a civil engineer is appropriate at this time. It is anticipated that your recommended requirements will be adequately addressed during the preparation of any future development plans, however this is an existing project with no immediate expansion plans. If and when future development plans are prepared, engineering reports will be provided along with recommendations for the appropriate water system improvements.

Conservation. The Nona Lani Cottages already has a repair and maintenance program in place. No additional landscape planting is proposed, however existing native climate-adapted plants have been used and will be considered for planting, in the event of any future landscape alterations are made.
Mr. Jeffrey K. Eng
Department of Water Supply
Re: Nona Lani Cottages
February 17, 2009
Page 2

Thank you again for commenting. If you have any further questions, please do not hesitate to contact myself or Raymond Cabebe of our office.

Sincerely,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

attachment

c: Mr. David Y.S. Kong, Sr.
   Ms. Cherlyn Kong
   Mr. Jeffrey Dack
February 10, 2009

Mr. Jeffrey P. Dack, Staff Planner
Department of Planning
County of Maui
250 South High Street
Wailuku HI 96793

Re:  I.D.: CPA 2006/0001, CIZ 2006/0001, EA 2006/0002
TMK:  3-9-041:001
Project Name: Draft Environmental Assessment in Support of Nona Lani Cottages
CPA and CIZ

Dear Mr. Dack:

Thank you for the opportunity to comment on this application.

Source Availability and Consumption
The project area is served by the Central Maui System. The main sources of water for this system are the designated Iao aquifer, Waihe'e aquifer, the Iao tunnel and the Iao-Waikapu Ditch. New source development projects include Maui Lani Wells, Waikapu South well and Waialae Surface Water Treatment Plant. The property is served by a 1-inch meter. Depending upon the ultimate use of the property, with existing use just over 8,000 gpd, rezoning the 2.27 acre subject parcel from residential to hotel could potentially result in 30,000 gallons per day of additional consumption. We understand that no development is proposed at this time. Consumption for the current operation is well below system standards for hotel use.

System Infrastructure
The subject property is fronted by a 12-inch waterline and two fire hydrants along South Kihei Road. Granting of the subject application should be conditioned upon 1. Submittal and approval of domestic and fire flow calculations prepared by a licensed engineer or architect to determine

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)

**Conservation**

To alleviate demand on the Central Maui system, please find attached a conservation checklist for the Home and Yard, and our planting brochure. We recommend that implementation of the following conservation measures be made a condition of the subject permits:

- **Maintain Fixtures to Prevent Leaks:** A simple, regular program of repair and maintenance can prevent the loss of hundreds or even thousands of gallons a day. The applicant should establish a regular maintenance program.

- **Use Climate-adapted Plants:** In the event of any landscape alterations climate-adapted native plants should be used to the extent feasible. The project is located in the “Maui County Planting Plan” - Plant Zone 3. Native plants adapted to the area conserve water and protect the watershed from degradation due to invasive alien species.

Should you have any questions, please contact our Water Resources and Planning Division at 244-8550.

Sincerely,

[Signature]

Jeffrey K. Eng., Director

cc: engineering division

Attachments:
A Checklist of Water Conservation Ideas for the Home & Yard
Plant Brochure: “Saving Water in the Yard”
June 13, 2008

Mr. Jeffrey S. Hunt, Director
Department of Planning
250 South High Street
Wailuku, HI 96793

Attention: Mr. Clayton Yoshida
Mr. Jeffrey Dack

Dear Mr. Hunt:

Re: Final Environmental Assessment in support of Applications for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001)

Thank you for your letters dated May 12, 2008 regarding the Draft Environmental Assessment (EA) and applications for Community Plan Amendment and Change in Zoning for the subject project. As you have determined that the use of the eight (8) cottages as transient vacation rentals is an existing non-conforming use (letter dated March 6, 2008 to Mr. Thomas Welch, Esq.), please be advised that Nona Lani Cottages are not “temporary vacation rentals”. The applicants have been in operation for 36 years and intend to continue to operate as such. Please correct your project description in future correspondence.

HRS Chapter 343 requires identification of direct, indirect, and cumulative impacts of the proposed entitlement actions (i.e. the Community Plan Amendment and Change in Zoning) on the environment along with socio-economic and technical considerations. There are no direct impacts since these are merely entitlement actions. However, determination of indirect and cumulative impacts on the infrastructure in Kihei for a “hypothetical full build-out” of an 80-unit hotel on the subject property would require the consultation of professional architects, civil & traffic engineers, etc. We hold to the conviction that it is not prudent to expect the applicant to have plans and engineering reports prepared since the full build-out scenario is strictly hypothetical and would trigger the requirement of a Special Management Area (SMA) Use Permit.

In further response to your comments:

1. **Roadways and Traffic.** We agree that there is no need for preparation of a Traffic Impact Assessment Report (TIAR) since there are no development plans. In Section III.D.1., a cursory analysis was done to estimate the potential generation of traffic of a “hypothetical full build-out” of eighty (80) hotel

LANDSCAPE ARCHITECTURE

CITY AND REGIONAL PLANNING

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units. Without the aid of a traffic engineer and specific development plans, it is not possible to determine cumulative projections and mitigation measures. As noted in the Department of Public Works comments, development of the site would require roadway improvements such as curbs, gutters and sidewalks, in addition to the preparation of a TIAR.

2. **Wastewater.** In Section III.D.2., it is estimated that the “hypothetical full build-out”, on average, would generate approximately 20,000 gallons of wastewater per day. The net average flow (projected daily flow minus current daily flow), determined by a civil engineer, would be subject to wastewater assessment fees in effect at the time of development. The Kihei Wastewater Reclamation Facility currently has capacity to accommodate the estimated “full build-out” potential.

3. **Water.** In Section III.D.3., it is estimated that the “hypothetical full build-out”, on average, would generate a demand of 28,000 gallons of potable water per day. A civil engineer would determine the net demand required for the project and if the existing water service is adequate to serve the development.

Following is a response to the Maui Planning Commission’s sole comment:

**Full Build-Out.** The “hypothetical full build-out” scenario of 80 units is based on 500 sq. ft. units and approximately 4,700 sq. ft. of support service area (lobby, offices, maintenance, housekeeping, etc.), keeping within the allowable lot coverage (LC) and floor area ratio (FAR) limitations of H-1 Hotel District zoning. The number of units in “full build-out” could be less, with larger units, or more, with smaller units.

**Existing Properties.** The Nona Lani Cottages property is adjoined by two multi-family developments: Kai Makani to the north and Southpointe to the east; and one hotel zoned property to the south, Kihei Holiday. Further south on South Kihei Road, there are two other large hotel zoned properties: the Maui Beach Resort (formerly known as the Isana Resort) and the Maui Lu Resort. The density, in terms of units per acre are as follows:

<table>
<thead>
<tr>
<th>Property</th>
<th>Type</th>
<th>Units</th>
<th>Acreage</th>
<th>Units/Acre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nona Lani</td>
<td>Transient vacation rentals</td>
<td>12</td>
<td>2.270</td>
<td>5.3</td>
</tr>
<tr>
<td>Kai Makani</td>
<td>Multi-family</td>
<td>112</td>
<td>9.848</td>
<td>11.4</td>
</tr>
<tr>
<td>Maui Lu</td>
<td>Hotel (future timeshares)</td>
<td>388</td>
<td>27.282</td>
<td>14.2</td>
</tr>
<tr>
<td>Southpointe</td>
<td>Multi-family</td>
<td>346</td>
<td>14.819</td>
<td>23.3</td>
</tr>
<tr>
<td>Maui Beach Resort</td>
<td>Hotel-condo</td>
<td>53</td>
<td>2.190</td>
<td>24.2</td>
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<tr>
<td>(Isana)</td>
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</tr>
<tr>
<td>Kihei Holiday</td>
<td>Hotel-condo</td>
<td>48</td>
<td>1.930</td>
<td>24.9</td>
</tr>
</tbody>
</table>

**Appropriate number of units.** The future “appropriate” number of units would depend on many different variables, such as market conditions and the wishes of the
family. It would depend on whether the family would want to develop a “pure” hotel, hotel-apartment, or to market the project as a condominium or timeshare project.

In any case, any further development of the property would come under the purview of the Maui Planning Commission through the Special Management Area (SMA) permit process. The proposed two (2) story (H-1) Hotel District development would be based on what the Planning Commission deems to be “appropriate” at that future time.

Therefore, in consideration of the foregoing, we are submitting one (1) complete Final Environmental Assessment for your review. Please advise us on the number of additional copies required. If you have any questions regarding the above, please do not hesitate to call.

Respectfully submitted,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

cc: Ms. Cherlyn Kong
    Mr. David Kong
    Mr. Clayton Yoshida
    Mr. Tom Welch
Mr. Christopher L. Hart, ASLA
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793

Dear Mr. Hart:

SUBJECT: DRAFT ENVIRONMENTAL ASSESSMENT IN SUPPORT OF APPLICATIONS FOR A COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR THE SITE OF THE EXISTING NONALANI COTTAGES TEMPORARY VACATION RENTALS LOCATED AT 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII TMK: (2) 3-9-041:001 (EA 2006/0002) (CPA 2006/0001) (CIZ 2006/0001)

At the regular meeting of April 22, 2008, the Maui Planning Commission (Commission) reviewed the above-referenced document and provided the following comment:

1. Given that the site currently contains 8 cottage units and 4 rooms within the residence on the site, and that the DEA identifies "the hypothetical full build-out of the property at the requested H-1 Hotel District zoning" to be 80 units, please identify what would be an appropriate number of units under the requested H-1 Hotel District zoning.
Mr. Christopher L. Hart, ASLA
May 12, 2008
Page 2

Thank you for your cooperation. Should you require further clarification, please contact Staff Planner Jeffrey Dack, AICP, by email to jeffrey.dack@mauicounty.gov or by telephone at 270-6275.

Sincerely,

CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

For: JEFFREY S. HUNT, AICP
Planning Director

xc: Colleen M. Suyama, Deputy Planning Director
Jeffrey P. Dack, AICP, Staff Planner
EA Project File
General File

JSH:CIY:JPD:bw
K:\WP_DOCS\PLANNING\EA\2005\0002_NONALANICOTTAGES\mpc-deacomm.\docs
Mr. Christopher L. Hart, ASLA
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793

Dear Mr. Hart:

SUBJECT: DRAFT ENVIRONMENTAL ASSESSMENT IN SUPPORT OF APPLICATIONS FOR A COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR THE SITE OF THE EXISTING NONA LANI COTTAGES TEMPORARY VACATION RENTALS LOCATED AT, 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII TMK: (2) 3-9-041:001 (EA 2006/0002) (CPA 2006/0001) (CIZ 2006/0001)

The Department of Planning (Department) has reviewed the Draft Environmental Assessment (DEA) in support of applications for a Community Plan Amendment and Change in Zoning and has considered the discussion of the Maui Planning Commission on this subject at their April 22, 2008 meeting. Although the Department has commented extensively on versions of the Preliminary DEA, the Department now provides the following additional comments on the DEA in light of recent discussions on DEA:

1. Chapter 1. Description of the Existing Environment, Potential Impacts and Mitigation Measures

D. Infrastructure Subsection 1. Roadways and Traffic

Please provide information and if necessary, mitigation measures, for cumulative traffic impacts which could result from the 80 units of "hypothetical full build-out of the property at the requested H-1 Hotel District zoning". There may not be the need to involve the preparation of a Traffic Impact Assessment Report (TIAR) at this time, but instead might be able to adequately rely upon information from one or more other recent TIARs conducted for projects nearby, such as in 2007 for the redevelopment of the Maui Lu project nearby.
D. Infrastructure Subsection 2. Wastewater

Please provide information and if necessary, mitigation measures, for cumulative impacts upon the capacity of the regional wastewater system which could result from the 80 units of "hypothetical full build-out of the property at the requested H-1 Hotel District zoning".

D. Infrastructure Subsection 3. Water

Please provide information and if necessary, mitigation measures, for cumulative impacts upon the capacity of the water supply system which could result from the 80 units of "hypothetical full build-out of the property at the requested H-1 Hotel District zoning".

Thank you for your cooperation. Should you require further clarification, please contact Staff Planner Jeffrey Dack, AICP, by email to jeffrey.dack@mauicounty.gov or by telephone at 270-6275.

Sincerely,

[Signature]

CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

For: JEFFREY S. HUNT, AICP
Planning Director

xc: Colleen M. Suyama, Deputy Planning Director
    Jeffrey P. Dack, AICP, Staff Planner
    EA Project File
    General File

JSH:CLY:JPD:by
K:WP_DOS/IPLANNING/EA20080002_NONALANICOTTAGES/DEPT_DEACOMMENTS.DOC
April 16, 2008

Ms. Cheryl K. Okuma, Director
Department of Environmental Management
2200 Main Street, Suite 175
Wailuku, Hawaii 96793
Attention: Mr. Gregg Kresge

Dear Ms. Okuma:

RE: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: (2) 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001).

Thank you for your February 12, 2008 “no comment” memorandum in response to the Draft Environmental Assessment in support of the Community Plan Amendment and Change in Zoning applications for the subject project.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

Cc: Mr. David Y.S. Kong, Sr.
Ms. Cherlyn Kong
Mr. Jeffrey Dack
MEMO TO:       JEFF HUNT, PLANNING DIRECTOR
FROM:          CHERYL K. OKUMA, ESQ., DIRECTOR OF ENVIRONMENTAL
               MANAGEMENT
SUBJECT:       NONA LANI COTTAGES, LLC
               CPA 2006/0001, CIZ 2006/0001, AND EA 2006/0002
               TMK (2) 3-9-041:001, KIHEI

We reviewed the subject application and have the following comments:

1.         Solid Waste Division comments
   a.        None.

2.         Wastewater Reclamation Division comments:
   a.        None.

If you have any questions regarding this memorandum, please contact Gregg Kresge at 270-8230.
April 16, 2008

Mr. Morris M. Atta, Administrator
Land Division
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Atta:

RE: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: (2) 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001).

Thank you for your letter dated February 1, 2008 in response to the Draft Environmental Assessment in support of the Community Plan Amendment and Change in Zoning applications for the subject project.

We will respond directly to the Commission on Water Resource Management and the Engineering Division on their respective comments.

Thank you again for your letter. If you have any further questions, please do not hesitate to contact me.

Sincerely,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

Attachment

c: Mr. David Y.S. Kong, Sr.
   Ms. Cherlyn Kong
   Mr. Jeffrey Dack

LANDSCAPE ARCHITECTURE
CITY AND REGIONAL PLANNING
115 N. MARKET STREET • WAILUKU, MAUI, HAWAII 96793-1705 • PHONE: 808-242-1955 • FAX: 808-242-1956
County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

Attention: Mr. Jerry Dack

Gentlemen:

Subject: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for Nona Lani Cottages

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR) Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comment.

Other than the comments from Commission on Water Resource Management, Engineering Division, the Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0433. Thank you.

Sincerely,

[Signature]

[Administrator]
April 16, 2008

Mr. W. Roy Hardy, Hydrologic Program Manager
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Attention: Mr. Charley Ice

Dear Mr. Hardy:

RE: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: (2) 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001).

Thank you for your memorandum dated January 14, 2008 in response to the subject Draft Environmental Assessment (EA) in support of the Community Plan Amendment and Change in Zoning applications for the subject project.

The Maui Department of Water Supply (DWS) has been solicited for comments on the Draft EA, and their comments will be incorporated into the Final EA document. By these applications, it is assumed that the DWS would include this project in its Water Use and Development Plan, although this is an existing project with no immediate expansion plans.

Thank you again for your comments. If you have any further questions, please do not hesitate to contact me.

Sincerely,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

CLH:rec
c: Mr. David Y.S. Kong, Sr.
Ms. Cherlyn Kong
Mr. Jeffrey Dack

LANDSCAPE ARCHITECTURE
CITY AND REGIONAL PLANNING
115 N. MARKET STREET • WAILUKU, MAUI, HAWAII 96793-1706 • PHONE 808-242-1955 • FAX 808-242-1956
MEMORANDUM

TO:  DLNR Agencies:
    x Div. of Aquatic Resources
    _ Div. of Boating & Ocean Recreation
    x Engineering Division
    _ Div. of Forestry & Wildlife
    _ Div. of State Parks
    x Commission on Water Resource Management
    x Office of Conservation & Coastal Lands
    x Land Division – Maui District

FROM:  Morris M. Attal
SUBJECT:  Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for Nona Lani Cottages
LOCATION:  Kihei, Maui, TMK: (2) 3-9-41:1
APPLICANT:  Chris Hart & Partners on behalf of Nona Lani Cottages, LLC

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by February 1, 2008.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

( ) We have no objections.
( ) We have no comments.
( ) Comments are attached.

Signed: ________________
Date: ________________

[Signature]
Thank you for the opportunity to review the subject document. The Commission on Water Resource Management (CWARM) is the agency responsible for administering the State Water Code (Code). Under the Code, all waters of the State are held in trust for the benefit of the citizens of the State, therefore, all water use is subject to legally protected water rights. CWARM strongly promotes the efficient use of Hawaii's water resources through conservation measures and appropriate resource management. For more information, please refer to the State Water Code, Chapter 174C, Hawaii Revised Statutes, and Hawaii Administrative Rules, Chapters 13-167 to 13-171. These documents are available via the Internet at http://www.hawaii.gov/dlnr/cwrm.

Our comments related to water resources are checked off below.

1. We recommend coordination with the county to incorporate this project into the county’s Water Use and Development Plan. Please contact the respective Planning Department and/or Department of Water Supply for further information.

☐ 2. We recommend coordination with the Engineering Division of the State Department of Land and Natural Resources to incorporate this project into the State Water Projects Plan.

☐ 3. There may be the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality.

Permits required by CWARM: Additional information and forms are available at www.hawaii.gov/dlnr/cwrm/forms.htm.

☐ 4. The proposed water supply source for the project is located in a designated ground-water management area, and a Water Use Permit is required prior to use of ground water.

☐ 5. A Well Construction Permit(s) is (are) required before the commencement of any well construction work.

☐ 6. A Pump Installation Permit(s) is (are) required before ground water is developed as a source of supply for the project.
7. There is (are) well(s) located on or adjacent to this project. If wells are not planned to be used and will be affected by any new construction, they must be properly abandoned and sealed. A permit for well abandonment must be obtained.

8. Ground-water withdrawals from this project may affect streamflows, which may require an instream flow standard amendment.

9. A Stream Channel Alteration Permit(s) is (are) required before any alteration can be made to the bed and/or banks of a stream channel.

10. A Stream Diversion Works Permit(s) is (are) required before any stream diversion works is constructed or altered.

11. A Petition to Amend the Interim Instream Flow Standard is required for any new or expanded diversion(s) of surface water.

12. The planned source of water for this project has not been identified in this report. Therefore, we cannot determine what permits or petitions are required from our office, or whether there are potential impacts to water resources.

13. We recommend that the report identify feasible alternative non-potable water resources, including reclaimed wastewater.

OTHER:

This is represented as an existing use with no proposed change.

If there are any questions, please contact Charley Ioe at 587-0251.
April 16, 2008

Mr. Eric T. Hirano, Chief Engineer
Engineering Division
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Attention: Ms. Alyson Yim

Dear Mr. Hirano:

RE: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: (2) 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001). (Ref. DEAComPlanAmendNonaLaniCottages Maui.394)

Thank you for your memorandum dated January 27, 2008 in response to the subject Draft Environmental Assessment in support of the Community Plan Amendment and Change in Zoning applications for the subject project.

Please be advised that there are no immediate construction plans for the project. Mr. Francis Cerizo, Flood Coordinator with the Maui County Department of Planning, will be consulted prior to any future construction. Future plans will also conform to Title 44 of the Code of Federal Regulations (44CFR) and Maui County Flood Hazard District Ordinance No. 1145.

Thank you again for your comments. If you have any further questions, please do not hesitate to contact me.

Sincerely,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

Attachment

Cc: Mr. David Y.S. Kong, Sr.
Mr. Jeffrey Dak

LANDSCAPE ARCHITECTURE
CITY AND REGIONAL PLANNING
115 N. MARKET STREET • WAILUKU, MAUI, HAWAII 96793-1706 • PHONE 808-242-1955 • FAX 808-242-1956
MEMORANDUM

TO:    DLNR Agencies:
      x Div. of Aquatic Resources
      x Div. of Boating & Ocean Recreation
      x Engineering Division
      Div. of Forestry & Wildlife
      Div. of State Parks
      x Commission on Water Resource Management
      x Office of Conservation & Coastal Lands
      x Land Division – Maui District

FROM:  Morris M. Alata

SUBJECT: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for Nona Lani Cottages

LOCATION: Kihei, Maui, TMK: (2) 3-9-41:1
APPLICANT: Chris Hart & Partners on behalf of Nona Lani Cottages, LLC

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by February 1, 2008.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

( ) We have no objections.
( ) We have no comments.
( ) Comments are attached.

Signed: [Signature]
Date: [Date]
DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

LD/Moris Atta
Ref.: DEAComPlanAmendNonLandCottages
Maui.391

COMMENTS

(X) We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Flood Zone A4. The National Flood Insurance Program does regulate developments within Zone A4 as indicated in bold letters below.

() Please note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone ___.

() Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is ___.

(X) Please note that the project site must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

() Mr. Robert Sumitomo at (808) 768-8097 or Mr. Mario Su Li at (808) 768-8098 of the City and County of Honolulu, Department of Planning and Permitting.

() Mr. Kelly Gomes at (808) 961-8327 (Hilo) or Mr. Kiran Emile at (808) 327-3530 (Kona) of the County of Hawaii, Department of Public Works.

(X) Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.

() Mr. Mario Antonio at (808) 241-6620 of the County of Kauai, Department of Public Works.

() The applicant should include project water demands and infrastructure required to meet water demands. Please note that the projects requiring water service from the Honolulu Board of Water Supply system will be required to pay a resource development charge, in addition to Water Facilities Charges for transmission and daily storage.

() The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update.

() Additional Comments:

() Other:

Should you have any questions, please call Ms. Suzie S. Agraum the Planning Branch at 587-0258.

Signed: [Signature]

Date: 11/27/08

ERIC T. HIIRANO, CHIEF ENGINEER
April 16, 2008

Mr. Milton M. Arakawa, Director
Department of Public Works
200 South High Street
Wailuku, Hawaii 96793
Attention: Mr. Michael Miyamoto

Dear Mr. Arakawa:

RE: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: (2) 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001).

Thank you for your January 8, 2008 memo in response to the Draft Environmental Assessment in support of the Community Plan Amendment and Change in Zoning applications for the subject project.

It is anticipated that your comments will be adequately addressed during the preparation of any future development plans, however this is an existing project with no immediate expansion plans.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Christopher L. Hart, ASLA
President
Landscape Architect - Planner

attachment

cc: Mr. David Y.S. Kong, Sr.
Ms. Cherlyn Kong
Mr. Jeffrey Dack
MEMO TO: JEFFREY S. HUNT, A.I.C.P., PLANNING DIRECTOR
FROM: MILTON M. ARAKAWA, A.I.C.P., DIRECTOR OF PUBLIC WORKS
SUBJECT: DRAFT ENVIRONMENTAL ASSESSMENT, COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR NONA LANI COTTAGES, LLC
TMK: (2)3-8-041:001
EA 2006/0002, CPA 2006/0001 AND CIZ 2006/0001

We reviewed the subject application and have the following comments:

1. The architect and owner are advised that the project is subject to possible tsunami and flood inundation. As such, said project must conform to Ordinance No. 1145, pertaining to flood hazard districts.

2. A road-widening lot shall be provided for the adjoining half of South Kihei Road to provide for future 60 foot wide right-of-way and improved to County standards to include, but not be limited to pavement widening, construction of curb, gutter and sidewalk, street lights and relocation of utilities underground. Said lot shall be dedicated to the County upon completion of the improvements.

3. All structures such as walls, trees, etc., shall be removed or relocated from the road-widening strip. The rear boundaries of the road-widening strip shall be clearly marked to determine if said structures have been properly removed and relocated.

4. A 30 foot radius shall be provided at the intersection of the proposed subdivision road/driveway and the adjoining subdivision roads and State roads.
5. A verification shall be provided by a Registered Civil Engineer that the grading and runoff water generated by the project will not have an adverse effect on the adjacent and downstream properties.

6. A detailed and final drainage report and a Best Management Practices (BMP) Plan shall be submitted with the grading plans for review and approval prior to issuance of grading permits. The drainage report shall include hydrologic and hydraulic calculations and the schemes for disposal of runoff waters. It must comply with the provisions of the "Rules and Design of Storm Drainage Facilities in the County of Maui" and must provide verification that the grading and runoff water generated by the project will not have an adverse effect on adjacent and downstream properties. The BMP plan shall show the location and details of structural and non-structural measures to control erosion and sedimentation to the maximum extent practicable.

7. During construction of this project, all construction employee parking shall be accommodated on the project site and not within the County road right-of-way.

8. All existing features such as structures, driveways, drainage ways, edge of pavement, etc. shall be shown on the project plat plan.

9. A site plan and a sight distance report to determine required sight distance and available sight distance at existing and proposed street intersections shall be provided for our review and approval.

10. The 100-year flood inundation limits shall be shown on the project site plans. Lot geometrics cannot be approved until such data is submitted and reviewed.

11. A detailed final Traffic Impact Assessment Report for the entire subdivision/development shall be submitted for our review and approval. The report shall also address regional traffic impacts and include assessments from the local community police officer.

12. For all infrastructure that may be dedicated to the County, preliminary construction plan submittal shall include a completed technical assistance review performed by the Disability and Communication Access Board (DCAB) for compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).
for all facilities. All technical and structural infeasible assessments shall be the responsibility of the developer and an agreement waiving the County of Maui of any future liability, including redesign and reconstruction for said facility, shall be recorded with the State Bureau of Conveyances.


15. Sight distance setbacks and easements will not be allowed for all roadways, public or private. Road right-of-way must accommodate sight distance allowances.

If you have any questions regarding this memorandum, please call Michael Miyamoto at 270-7845.

MMA: MMM: Is
xc: Highways Division
Engineering Division
S:\LUCA\CZM\Nonna_Lanai_Cottages_to_ea_cpa_pdr_39401001textbox.wpd
April 16, 2008

Ms. Tamara Horcajo, Director
Department of Parks & Recreation
700 Hali‘a Nakoa Street, Unit 2
Wailuku, Hawaii 96793
Attention: Mr. Patrick Matsui

Dear Ms. Horcajo:

RE: Applications for State Land Use District Boundary Amendment and Change In Zoning for the Proposed Serle Subdivision at TMK: (2) 2-7-002:043 Haiku, Maui, Hawaii (DBA 2006/0002, CIZ 2006/0005)

Thank you for your January 24, 2008 “no comments to offer” response to the Draft Environmental Assessment in support of the Community Plan Amendment and Change in Zoning applications for the subject project.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

[Signature]

Christopher L. Hart, ASLA
Landscape Architect - Planner

attachment

C: Mr. David Y.S. Kong, Sr.
   Ms. Cherlyn Kong
   Mr. Jeffrey Dack
TRANSMITTAL

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<td>X  Civil Defense (CPA/CIZ only)</td>
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<td>X  Dept of Environmental Management (2)</td>
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PROJECT NAME: DRAFT ENVIRONMENTAL ASSESSMENT IN SUPPORT OF NONA LANI COTTAGES COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING

APPLICANT: NONA LANI COTTAGES, LLC

SUBJECT I.D.: CPA 2006-0001, CIZ 2006/0001, and EA 2006/0002

TMK: (2) 3-9-041:001

TRANSMITTED TO YOU ARE THE FOLLOWING:

☑ Application

THESE ARE TRANSMITTED AS CHECKED BELOW:

☑ For your Comment and Recommendation

Please provide any previous comments, letters, etc. pertinent to this application and identify which of your comments and recommendations you would like the Department of Planning to recommend as conditions of project approvals. Submit your comments directly to me by February 6, 2008. If no comment, sign the bottom and return. For additional clarification, please contact me at jeffrey.dack@mauicounty.gov or by phone at 270-6275.

Sincerely,

Jeffrey P. Dack, Staff Planner

DEPARTMENT OF PLANNING

COUNTY OF MAUI

2008 JAN 29 PM 3:14

We have no comments to offer: ☑

Comments Attached: _

Signed: Patrick Z. Martin

Dated: 1/2/08
April 16, 2008

Chief Thomas M. Phillips
Polic Department
55 Mahalani Street
Wailuku, Hawaii 96793
Attention: Officer Brad Hickle

Dear Chief Phillips:

RE: Draft Environmental Assessment for Community Plan Amendment and Change in Zoning for the Nona Lani Cottages at TMK: (2) 3-9-041:001 (EA 2006/0002; CPA 2006/0001; CIZ 2006/0001).

Thank you for your December 28, 2007 memorandum in response to the Draft Environmental Assessment in support of Community Plan Amendment and Change in Zoning applications for the subject project. We acknowledge your comment that the applicants' request will not have any impact on police services.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Christopher L. Hart, ASLA
Landscape Architect - Planner

attachment
c:  Mr. David Y.S. Kong, Sr.
     Ms. Cherlyn Kong
     Mr. Jeffrey Dack
MEMORANDUM

TO: JEFFREY S. HUNT, PLANNING DIRECTOR
FROM: THOMAS M. PHILLIPS, CHIEF OF POLICE
TMK: (2) 3-9-041:001
Project Name: Nona Lani Cottages, LLC
Applicant: DEA in Support of Nona Lani Cottages
Community Plan Amendment and Change in Zoning

No recommendation or comment to offer.

X Refer to enclosed comments and/or recommendations.

As always, thank you for giving us the opportunity to comment on this project.

Assistant Chief Wayne T. Ribao
For: THOMAS M. PHILLIPS
Chief of Police

Enclosure
TO : THOMAS PHILLIPS, CHIEF OF POLICE, COUNTY OF MAUI
VIA : CHANNELS
FROM : BRAD HICKLE, POLICE OFFICER III, DISTRICT VI KIHEI
SUBJECT : DRAFT ENVIRONMENTAL ASSESSMENT (DEA), CHANGE IN ZONING (CIZ), COMMUNITY PLAN AMMENDMANT (CPA), FOR THE NONA LANI COTTAGES @ TMK: (2) 3-9-041-001

APPLICANT INFORMATION:

The application was prepared by Chris Hart & Partners for the applicant, Cherlyn KONG of the Nona Lani Cottages, LLC. Ms. KONG is submitting the Draft Environmental Assessment (DEA) in support of a request for Change in Zoning (CIZ) and request for Community Plan Amendment (CPA) for the Nona Lani Cottages which are located at 455 South Kihei Road, Kihei Hawaii.

IMPACT ON POLICE:

After reviewing the application this Officer discovered the applicant(s) do not have any plans at this time to increase the room count on this property. Based upon this information I do not believe the approval in the applicant(s) requests will have any impact on police services.

RECOMMENDATIONS:

It is recommended that this application be returned to the County Planning Department for final review and consideration. Thank you for the opportunity to review this request and submit our comments and/or recommendations.

Respectfully Submitted,

Officer Brad Hickle
12/26/07 17:00 hours