

PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of the Application)
)
 of)
)
 C. M. POULTON for a Special)
 Management Area Use Permit)
)
 Tax Map Key: 7-7-04:03)
)
 _____)

DECISION AND ORDER

The above-entitled matter came on for hearing before the Planning Commission of the County of Hawaii on July 25 and 26, 1979, and August 7, 1979, at the Kealakehe School Cafetorium, North Kona, Hawaii. The Applicant, C. M. Poulton, was represented by Colin L. Love, the Planning Department of the County of Hawaii was represented by Sandra E. Pechter, the Friends of Kamo Point was represented by Andrew C. Levin, the Kona Hawaiian Civic Club was represented by Al Kaulia, and the Congress of Hawaiian People was represented by David Roy. The Planning Commission having adopted Findings of Fact and Conclusions of Law,

IT IS ORDERED that in accordance with the Findings of Fact and Conclusions of Law herein, the application of C. M. Poulton for a Special Management Area Use Permit be and it hereby is denied.

Dated: Hilo, Hawaii, September 5, 1979.

HAWAII COUNTY PLANNING COMMISSION

BY *William F. Mielcke*
 for WILLIAM F. MIELCKE
 Its Chairman

APPROVED as to
 FORM and LEGALITY
Bruce M. St.
 ASSISTANT CORPORATION COUNSEL
 COUNTY OF HAWAII
 Date SEP 5 1979

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FINDINGS OF FACT
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1. Notice of the contested case hearings in the above-entitled matter was published in the Hawaii Tribune-Herald on July 7, 23 and August 1, 1979.

2. The Applicant, C. M. Poulton, has applied for a Special Management Area Use Permit to authorize the development of a 91-unit condominium project and related improvements.

3. The application was filed with the Planning Department of the County of Hawaii on or about November 16, 1978.

4. The real property in question is situated in Kaunamalulu, North Kona, Island and State of Hawaii.

5. The parcel is identified by State of Hawaii Tax Map Key: 7-7-04:03.

6. The subject parcel contains an area of 5.489 acres.

7. The subject parcel abuts the ocean and is situated seaward or makai of Ali'i Drive.

8. The parcel is located on the southern side of the geographical area known as Kamo Point.

9. The parcel is located within the Special Management Area as established through the provisions of HRS Chapter 205A.

10. Under the State Land Use district boundaries established in 1964 by the State of Hawaii Land Use Commission, the parcel is designated "Urban."

11. The County of Hawaii General Plan Land Use Pattern Allocation Map designates the parcel for "Resort" use.

12. The County of Hawaii Zone Map, Chapter 8, Article 2, of the Hawaii County Code, designates the parcel to be zoned as "Resort" with a density of one unit for each 1,250 square feet of land area (V-1.25).

13. The minimum building setback requirements in a Resort (V-1.25) zoned area are 20 feet from the front and rear property lines and 8 feet for the first story plus 2 feet for each additional story from the side property line.

14. The maximum building height limitations in a Resort (V-1.25) zoned area are 45 feet and 3 stories.

15. Before a building permit may be issued for the construction of any building and structures in a Resort (V-1.25) zoned area, plan approval must be obtained from the County of Hawaii Planning Director.

16. As a shoreline parcel, the subject property falls within the shoreline setback requirements of HRS Chapter 205 and Rule 8 of the Planning Commission Rules of Administrative Procedure.

17. The minimum shoreline setback from the established high water mark is 40 feet.

18. The County of Hawaii General Plan Facilities Map locates the parcel within a potential tsunami inundation area.

19. Ali'i Drive provides access to the subject parcel.

20. There are no municipal sewer lines connecting with the subject parcel.

21. Water, electricity and telephone service are available to the subject parcel.

22. The coastal waters along the shoreline of the parcel are classified as Class AA waters.

23. There are no endangered plant species on the subject parcel; the vegetation being primarily ekoa (*Leucaena Glauca*) with some grass and weed under cover opiuma (*Pithecellobium Dulce*), kiawe (*Prosopis Pillada*) and coastal vegetation, including naupakakai (*Scaevola Sericea*) and pohuehue (*Ipomoea Pes Caprae*).

24. The parcel is not known to be a habitat for endangered or threatened animal species.

25. The subject parcel was recommended for inclusion in the Hawaii Register of Historic Places and was at one time placed on this register but is not presently a site on the Hawaii Register of Historic Places.

26. The parcel is adjacent to a historic complex situated in Holualoa, North Kona, known as the Kamoia Point Complex.

27. The Planning Commission of the County of Hawaii met on August 15, 1979, in the Councilroom, County Building, Hilo, Hawaii, and on August 16, 1979, at the Hawaiian Homes Meeting Hall in Waimea, Hawaii, to consider the aforesaid application for a Special Management Area Use Permit.

28. Prior to the Planning Commission meeting on August 15 and 16, 1979, aforesaid, all interested parties were requested to submit proposed findings of fact and conclusions of law. Said proposed findings of fact and conclusions of law were submitted on August 13, 1979.

29. At the aforesaid meetings on August 15 and 16, 1979, the Planning Commission considered each of the proposed findings of fact and conclusions of law submitted by the parties:

A. A motion was made and seconded to deny the application, based on the findings of fact and conclusions of law submitted by the Friends of Kamoia Point. There were four votes in favor of the motion and four votes against the motion.

B. A motion was made and seconded to approve the application, based on the findings of fact and conclusions of law submitted by the County of Hawaii Planning Department.

There were four votes in favor of the motion and four votes against the motion.

C. A motion was made and seconded to deny the application, based on the findings of fact and conclusions of law submitted by the Kona Hawaiian Civic Club. There were four votes in favor of the motion and four votes against the motion.

D. A motion was made and seconded to approve the application, based on the findings of fact and conclusions of law submitted by the Applicant. There were four votes in favor of the motion and four votes against the motion.

E. A motion was made and seconded to deny the application, based on the findings of fact and conclusions of law submitted by the Congress of Hawaiian People. There were four votes in favor of the motion and four votes against the motion.

30. A motion was made and seconded to deny the application, based on the findings of fact and conclusions of law submitted by the Friends of Kamoā Point, with the exception of finding number 2 and also based on the findings of fact and conclusions of law submitted by the Congress of Hawaiian People. There were four votes in favor of the motion and four votes against the motion.

31. A motion was made and seconded to approve the application, based on the stipulated facts and the County of Hawaii Planning Department's original conditions for approval of the development set forth on July 25, 1979. There were three votes in favor of the motion and five votes against the motion.

32. A motion was made and seconded to deny the application, based on insufficient evidence and a lack of conclusive supporting testimony. There were four votes in favor of the motion and four votes against the motion.

33. A motion was made to defer the application but it failed to get a second.

34. The chairman then announced that the application was denied because it failed to obtain five votes for approval.

35. Neither Chapter 205A, Hawaii Revised Statutes, nor Rule 9 of the County of Hawaii Planning Commission Rules Relating to Environmental Shoreline Protection prohibit the Applicant from reapplying for a Special Management Area Use Permit.

CONCLUSIONS OF LAW

1. The Hawaii County Planning Commission has jurisdiction to hear the above-captioned matter.

2. All procedural requirements for the contested case hearing have been met.

3. The application of C. M. Poulton for a Special Management Area Use Permit is denied because it failed to get the necessary five votes for approval.

4. The applicant may reapply for a Special Management Area Use Permit with the Hawaii County Planning Commission.

Dated: Hilo, Hawaii, September 5, 1979.

HAWAII COUNTY PLANNING COMMISSION

By *John Whitmarsh*
WILLIAM F. MIELCKE
Its Chairman

APPROVED as to
FORM and LEGALITY

Bruce M. Sp.
ASSISTANT CORPORATION COUNSEL
COUNTY OF HAWAII

Date SEP 5 1979