

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR)	
SPECIAL MANAGEMENT AREA)	SMA USE PERMIT
USE PERMIT)	NO. <u>138</u>
by)	
ROBERT SMELKER)	
for)	
a 76-Unit Condominium Project)	
and Related Improvements)	
in)	
Holualoa, North Kona, Hawaii)	
)	

SPECIAL MANAGEMENT AREA USE PERMIT

The County Planning Commission at a duly held public hearings on June 12 and July 16, 1980, considered the application of ROBERT SMELKER for a Special Management Area Use Permit in accordance with Rule No. 9 of the Planning Commission, Rules and Regulations Relating to Environmental Shoreline Protection to allow the development of a 76-unit condominium project and related improvements at Holualoa, North Kona, Hawaii, Tax Map Key 7-6-15:7, 20 and 21.

The Commission has found the following:

That the approval of the subject requests will not result in the loss of valuable natural, cultural, or recreational resources of the coastal zone. No rare native or endemic plants and/or animal species are known to inhabit the site. In addition, since the property is located mauka of Ali'i Drive, the proposed development is not expected to have any significant adverse effects on coastal resources, detract from lines of sight toward the ocean nor adversely affect any existing public access to the shoreline.

No adverse impacts on air quality is expected to be generated by the proposed development. The nature of the proposed development is such that no unusual air emissions are likely to be produced from it. Air emissions generated during the construction phase can be mitigated by existing regulations.

While the property is potentially subject to the inundation from flood waters and tsunamis, these potential hazards to the subject property can be mitigated without increasing the hazard to surrounding properties through conditions of approval.

Sewage from the proposed development is planned to be disposed of by a private sewage treatment plant meeting with the requirements of the State Department of Health. Thus, pollution impacts on coastal waters should be minimal. Further, all

essential utilities and facilities are or will be made available to the subject property. In this regard, the proposed development will complement the Multiple Residential element of the General Plan which encourages the development of multiple residential units in areas serviced by existing infrastructures.

Based on the above, it is determined that the proposed development will not have any substantial adverse impacts on the surrounding area nor will its approval be contrary to the objectives and policies of Chapter 205-A or with the intent of Rule 9. The granting of the request to allow the construction of the 76-unit condominium project also will not be violative of the purpose and intent of the Planned Development Permit provision of the Zoning Code.

Therefore, the Commission hereby grants to the petitioner a Special Management Area Use Permit to allow the development of a 76-unit condominium project and related improvements at Holualoa, North Kona, Hawaii, pursuant to the authority vested in it by Rule No. 9 of the Planning Commission.

Approval of the Special Management Area Use Permit is subject to the following conditions:

1. That prior to the issuance of a building permit for the development, there shall be legal and financial assurances, meeting with the approval of the Chief Engineer, and Corporation Counsel that the drainage improvements--as required herein--shall be completed within one (1) year of issuance of occupancy permit for the development. These drainage improvements shall be designed to handle 100-year frequency flood waters, meeting with the approval of the Chief Engineer, and shall be installed following the Shimabukuro Master Plan on file with the Department of Public Works, except as may be modified to fulfill other statutes and/or regulations. These improvements shall extend from the mauka boundary of the subject property to the shoreline or to an area deemed acceptable by the Chief Engineer.

In lieu of the above, the petitioner and/or his representative may initiate proceedings for the required drainage and related improvements by assessment pursuant to Chapter 16, Hawaii County Code and Chapter 67, HRS; provided that an agreement is executed prior to the issuance of Final Plan Approval for the development between the petitioner and/or his representative and the County of Hawaii through the Chief Engineer, Planning Director, and Corporation Counsel with the following provisions:

- a. an acceptable improvement district petition for the required drainage and related improvements is submitted to the County Council for its appropriate action prior to the issuance of building permit for any portion of the proposed development;

- b. an adequate and acceptable surety bond, certified check or other security acceptable to the Chief Engineer and approved by the Corporation Counsel in the sum equal to the estimated costs of the required improvements, including related land acquisition, design, and administrative costs

shall be submitted to the County together with the improvement district proposal. The Chief Engineer shall determine the amount of the required security prior to the Planning Director's issuance of preliminary plan approval for any portion of the proposed development;

c. in the event the improvement district proposal is rejected or not acted upon by the County Council prior to the issuance of occupancy permit for the development or within one (1) year from the date of submittal, whichever is later, the County shall be empowered to use the bond or other security which accompanies this agreement to initiate and complete the required drainage improvements;

d. in the event the County Council accepts the improvement district proposal, the bond or other security shall be retained until the improvements are completed or other security to assure the completion of the required improvements is accepted by the Chief Engineer and approved by the Corporation Counsel;

e. the bond or other security may be adjusted, at the mutual agreement of both parties, to reflect a reduction of the estimated cost of improvements by the inclusion of other parties within the improvement district or an overestimate of the costs; provided, however, the County may increase the bond or other security prior to the issuance of a building permit and/or after the disposition of the improvement district proposal by the County Council to reflect a more accurate cost estimate of the required improvements; and

f. that the agreement shall indemnify and hold the County forever harmless against loss from any and all future claims, actions, contributions, and any damages arising from (1) any flooding on or adjacent to the subject area; and (2) any errors, omissions, or negligent acts of the applicant, its officers, agents, employees, or subcontractors in connection with the construction of the flood drainage improvements; whichever may occur during the period between the issuance of a building permit and completion of the flood drainage improvements.


2. That the applicant shall submit an agreement to indemnify and hold the County of Hawaii harmless from and against any obligations, costs, fees, and liabilities which may arise as a result of the proposed use of the easement from the subject property to Alii Drive.
3. That plan approval shall not be granted until all legal issues concerning the easement have been resolved with the approval of the Corporation Counsel's office.
4. That parcels 20 and 21 of TMK: 7-6-15 shall be consolidated within six (6) months from the date of approval of the SMA Use Permit.
5. That the petitioner, or its authorized representative, shall submit plans and secure final plan approval within two (2) years from the date of compliance of Condition No. 1.

6. That construction shall commence within one (1) year from the receipt of final plan approval and shall be completed within two (2) years thereafter.
7. That the potential tsunami inundation area and level shall be indicated on the plans submitted for plan approval and building permit. Further, the plans submitted shall be in compliance with applicable rules and regulations of the Building Code.
8. That the affected land for the future Alii Drive realignment right-of-way shall be dedicated to the County prior to the issuance of the occupancy permit for the condominium development.
9. That access(es) to the proposed development shall meet with the approval of the Department of Public Works.
10. That the buildings shall not exceed the height limitation as established in the Zoning Code. No height variance shall be applied for any of the proposed buildings. Further, the loft area or mezzanine shall be removed or the buildings shall be redesigned to reflect an exterior appearance of two (2) or three (3) story buildings, depending on the zoning for the area, and approved by the Planning Department.
11. That the method of sewage disposal shall comply with the requirements of the appropriate State and County agencies.
12. That should any unanticipated archaeological sites be discovered during grading or construction of the development, work shall immediately cease and the Planning Director notified. Work shall not resume until approval is received from the Planning Director.
13. That all other applicable rules, regulations and requirements shall be complied with.

Should the foregoing conditions not be met, the Planned Development Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be from August 21, 1980.

Dated at Hilo, Hawaii this 14th day of October, 1980.


 WILLIAM J. PARIS, JR.
 Chairman, Planning Commission

APPROVED AS TO FORM AND LEGALITY:


 DEPUTY CORPORATION COUNSEL

Date: 1 Oct 80