

Planning Commission

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

Lorraine R. Inouye
Mayor

CERTIFIED MAIL

August 23, 1991

Mr. Donald E. Maloney
75-5909 Alii Drive
Kailua-Kona, HI 96740

Dear Mr. Maloney:

Special Management Area Use Permit Application (SMA 91-7)

Applicant: Donald E. Maloney

Requests: 12-unit Condominium and Related Improvements,

Revocation of SMA Use Permit No. 173 and

Shoreline Setback Variance No. 616 ✓

Tax Map Key 7-6-14:13

The Planning Commission at its duly held public hearing on August 15, 1991, voted to approve your application, SMA Use Permit No. 318, to allow for the construction of a 12-unit condominium building and related improvements. The property is located along the makai side of Alii Drive, adjacent and to the south of the Kona Banyan Tree Condominiums, Holualoa 1st and 2nd partition, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205-A, Hawaii Revised Statutes, and Rule 9, Special Management Area Rules and Regulations of the County of Hawaii is to preserve, protect, and, where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

One of the criteria for approving a development within the SMA is that it is consistent with the General Plan and Zoning Code. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) map which designates this area for Resort development. Further, the Resort-Hotel zoning designation allows for the proposed use.

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Another criteria in reviewing an SMA Use Permit application is that "The development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options." The proposed development is not anticipated to have substantial adverse ecological effects. The property, which is located within an area that has been extensively developed, is not known to contain any unique ecological systems nor provide habitats for any endangered plant or animal species. No adverse impacts on air and water quality are expected to be generated by the proposed development. Air emissions generated during the construction phase can be mitigated by existing regulations.

The property is located adjacent to the shoreline. Negative impacts on the local water resulting from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. A wastewater treatment plant will be provided as required to avoid impacts to coastal ecosystems. Therefore, no significant adverse impact to coastal ecosystems is anticipated.

The proposed development is not expected to have adverse impact on public access to or along the shoreline. Because of the relatively small size of the lot and the close proximity and availability of public access, a mauka/makai shoreline access is not required to assure continued public access to the shoreline. It is recommended, however, that approval of this application be conditioned upon assured lateral public shoreline access.

The site is located in an area that has already been extensively developed for condominium-type residential use. However, the structure's visual impacts should still be compatible with the surrounding environment. The building bulk and building area coverage will be evaluated at the time of plan approval to ensure that design considerations will be addressed. Similarly, the applicant's site plan shows a 6-foot high lava rock wall along the entire frontage of Alii Drive, excluding the driveway opening. The cumulative effect of this type of fencing, if continued extensively along Alii Drive,

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would be the eventual establishment of a high solid wall along Alii Drive that would have a 'tunneling' effect on open space resources as one travels the road. A condition of this approval would include that any wall or fence constructed along the Alii Drive frontage must be reviewed and approved by the Planning Department at the time of plan approval. The height and design of the wall or fence must not have cumulative impacts that would constrict views and an open space feeling.

As stated by the Historic Sites Section of the Department of Land and Natural Resources, the property has been heavily bulldozed and, therefore, the proposed construction will have "no effect" on historic sites.

Because of the small number of units, the proposed development will not significantly impact any surrounding roadways, provided that site distance from the driveway is improved in a manner meeting with the approval of the Department of Public Works.

The site is within the coastal flood hazard area. Hazard to property from tsunami or storm waves will be mitigated by compliance with County requirements for construction within the flood zone.

Based on the above, it is determined that the proposed development will not have substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is subject to the following conditions:

1. The applicant, successors or assigns shall comply with all stated conditions of approval.
2. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety days from the effective date of this permit.
3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of approval of the permit. To assure adequate time for plan

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approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures, landscaping, parking stalls, and related improvements associated with the proposed development. Plans shall be revised to minimize the dominant height and massiveness of the structure. In addition, the construction of walls or fences along the Alii Drive frontage shall be reviewed and approved at the time of plan approval. The height and mass of the wall/fence shall be evaluated in terms of its cumulative effect on view perspectives along Alii Drive.

4. Construction shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two years thereafter.
5. Sewage treatment facilities shall meet with the approval of the Department of Health.
6. A lateral shoreline access plan meeting with the approval of the Planning Director shall be submitted prior to receipt of Final Plan Approval. The lateral access plan shall provide for perpetual public access along the shoreline.
7. The minimum 20-foot shoreline setback area shall be clearly staked and delineated on ground. A letter confirming the staking shall be submitted prior to or in conjunction with a building permit application. No construction or construction-related activities shall occur within the minimum 20-foot shoreline setback area unless appropriate approvals have been secured pursuant to Rule 8 of the Planning Commission.
8. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

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9. Access to the subject property from Alii Drive, including sight distance improvements, shall meet with the approval from the Department of Public Works. The applicant shall also extend the pavement of that portion of Alii Drive fronting the subject property to its front property line meeting with the approval of the Department of Public Works prior to the issuance of a certificate of occupancy.
10. An emergency preparedness and response plan shall be filed with the Hawaii County Civil Defense Agency and the Planning Department prior to issuance of a certificate of occupancy for any portion of the development.
11. Comply with all other applicable laws, rules, regulations and requirements.
12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
13. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: (a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the petitioner, successors or assigns, and that are not the result of their fault or negligence; (b) the granting of the time extension would not be contrary to the general plan or zoning code; (c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and (d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

The Planning Commission also voted to revoke SMA Use Permit No. 173 and Shoreline Setback Variance No. 616, which allowed for the development of an 8-unit condominium and related improvements, including landscaping, a CRM wall and a sprinkler system within the minimum 20-foot shoreline setback area.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Mike Luce, Chairman
Planning Commission

6620d
jdk

xc: Mr. Jack Clark
Department of Public Works
Department of Water Supply
Department of Health
Civil Defense Agency
County Real Property Tax Division
West Hawaii Office
OSP, CZM Program w/background
DLNR
Plan Approval Section

F.M. Scott
327-5481

CERTIFIED MAIL

January 19, 1982

Mr. Albert Lui
Lui Enterprises
2048 South Beretania Street
Honolulu, HI 96726

Dear Mr. Lui:

Special Management Area (SMA) Use Permit Application
Planned Development Permit (PDP) Application
TMK: 7-6-14:12 & 13

The Planning Commission at its duly held public hearing on January 14, 1982, voted to approve your applications, SMA Use Permit No. 173 and PDP Permit No. 63, to allow the construction of an 8-unit condominium project and related improvements at Holualoa, North Kona, Hawaii.

Approval of these requests are based on the following:

That the proposed development is not anticipated to have any substantial adverse environmental or ecological effects. The purpose of the requests is to allow the development of eight (8)-condominium units within a single structure at a height not to exceed forty-five (45) feet. The proposed development also includes recreational facilities, landscaping, parking and other related improvements.

The property is not known to contain any unique ecological systems, nor provide habitats for any endangered plant or animal species. Further, while the subject property contains certain archaeological and historical features, these features are not considered significant enough to warrant preservation.

The proposed development is not anticipated to have any significant adverse impacts on coastal ecosystems or public access along the shoreline. According to the plans submitted, the improvements will not encroach into the twenty (20)-foot shoreline setback. This 20-foot shoreline setback requirement is intended to preserve the integrity of the shoreline area by not allowing undue encroachment to the coastline. Any potential adverse effects on the off-shore water quality will be mitigated

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through compliance with existing regulations. Such is the case in which the petitioner intends to construct a private sewage treatment plant. The construction of this system and the manner in which the sewage is to be disposed of will have to meet with the approval of the State Department of Health and any other approving agency(ies). Based on the above, it is determined that the impacts on coastal ecological systems will be negligible and are not anticipated to be significantly adverse.

Further the proposed development will not remove or impose restrictions on existing access routes to the shoreline or similar shoreline recreational areas. There are two (2) existing access points in this area which provides adequate access to the shoreline. However, this access situation requires that lateral movement along the shoreline also be possible. For this reason a lateral access requirement has been incorporated into the conditions of approval.

The petitioner also intends to preserve and retain the large tree in the front portion of the property (Ali'i Drive), as well as the existing trees around the perimeter of the property. The siting of the proposed building was done around these trees.

Based on the above, it is determined that the approval of the proposed project will not result in the loss of valuable natural, cultural, or recreational resources of this shoreline property and coastal area.

No adverse impacts on air and water quality are 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. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. The petitioner does intend to meet with any drainage improvements, to be imposed by the Department of Public Works. Further, negative impacts on the local water quality resulting from soil erosion and runoff during site preparation and construction phases are unlikely, but should they occur they can be adequately mitigated through compliance with existing ordinances and regulations. In regards to the hazards posed by potential tsunami inundation, these can be mitigated through the requirements of the Building Code and Plan Approval process.

In regards to the disposal of sewage, the petitioner intends to construct a private sewage treatment plant on the central portion of the property along Ali'i Drive meeting with the approval of the appropriate agencies. All other essential

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utilities and services, including water, 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 of the Planning Commission. The granting of the request to allow the construction of the 8-unit condominium units also will not be violative of the purpose and intent of the Planned Development Permit provision of the Zoning Code.

Approval of this SMA and PDP requests are subject to the following conditions:

1. That the petitioner, Lui Enterprises Inc., shall be responsible for complying with all of the stated conditions of approval.
2. The two (2) lots shall be consolidated prior to Final Plan Approval.
3. That plans shall be submitted to the Planning Department and Final Plan Approval, in accordance with Chapter 8 (Zoning Code), Hawaii County Code, secured for the entire development within one (1) year from the effective date of the Special Management Area (SMA) Use Permit.
4. That construction shall commence within one (1) year from the date of receipt of Final Plan Approval and be completed within two (2) years thereafter.
5. That the structure shall not exceed three (3) stories in height, in accordance with the requirements of Chapter 8 (Zoning Code), Hawaii County Code.
6. That the proposed development shall not encroach into the 20-foot shoreline setback area.
7. That a landscaping plan meeting with the approval of the Planning Director shall be submitted prior to Final Plan Approval. The landscaping plan shall include, but not be limited to, the retention of the existing trees as shown on preliminary submittal plans dated September 16, 1981.
8. That a shoreline lateral access plan shall be submitted prior to the receipt of Final Plan Approval. This lateral

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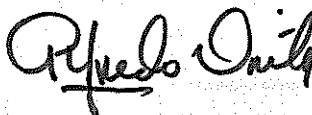
access plan shall meet with the approval of the Planning Director and contain all necessary information and proposed improvements to allow lateral access during high tides.

9. That the method of sewage disposal shall meet with the requirements of the State Department of Health.
10. That all other requirements which may be imposed during the Plan Approval process shall be complied with.
11. Should any unanticipated archaeological or historic sites be found during land preparation activities, work shall immediately cease and the Planning Department shall be notified. Work shall not be resumed until a review and clearance is obtained from the Planning Department.
12. That the proposed tsunami inundation elevation developed by the U. S. Army Corps of Engineers shall be noted on the plans submitted for Plan Approval. Further, disposal of run-off shall meet with the approval of the Chief Engineer.
13. That all other applicable rules, regulations and policies, including those of the Department of Water Supply, shall be complied with.

Should any of the above conditions not be met, the Special Management Area (SMA) Use Permit and the Planned Development Permit (PDP) shall be declared automatically void.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



ALFREDO ORITA
Chairman, Planning Commission

lgv

cc: Mr. Hiroshi Kasamoto
Department of Public Works
Department of Water Supply
Kona Services Office
Department of Health

bcc: Plan Approval Section