

CERTIFIED MAIL

January 6, 1986

Mr. C.M. Poulton
Executive Vice President
Makai Development Corporation
P.O. Box 2808
Kailua-Kona, HI 96745

Dear Mr. Poulton:

Special Management Area (SMA) Use Permit No. 192
Makai Development Corporation
Tax Map Key 7-7-04:3

Reference is made to our letter of July 29, 1985 to you which acknowledge receipt of your progress report. Also, within that correspondence it was pointed out that "In order to comply with Condition No. 3, we would emphasize that construction must begin on or before December 13, 1985."

A review of our records as well as those of the Building Division, reveal that no building permit had been issued for the proposed development. As such, in light of Condition No. 3 (construction timetable), we must inform you that SMA Use Permit No. 192 is deemed null and void due to non-compliance with the conditions of approval.

Should you wish to further pursue the proposed development, a new SMA Use Permit application must be submitted to this office for ultimate review and determination by the Planning Commission.

If you have any questions regarding the above, please contact this office.

Sincerely,



ALBERT LONO LYMAN
Planning Director

EC:lv

xc: Planning Commission
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Hawaii County Services - Kona

bcc: Plan Approval Section

JAN 7 1986

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF HAWAII

In the Matter of the)	Docket No. SMA 81-17
Petition of)	
)	
MAKAI DEVELOPMENT)	
CORPORATION,)	
)	
Petitioner.)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

The Planning Commission, having duly considered the record and evidence in this proceeding, the parties' proposed findings of fact and conclusions of law, and the parties' exceptions to the Planning Commission's proposed decision, makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

General Information.

1. On May 28, 1981, Makai Development Corporation filed a petition for a special management area (SMA) use permit pursuant to chapter 205A, Hawaii Revised Statutes (HRS), and rule 9 of the Planning Commission Rules Relating to Administrative Procedures for development of a 38-unit condominium project and related improvements, including tennis courts, swimming pools, community center building, public access to the shoreline, and other recreational amenities at Kaumalumalu, North Kona, Island, County, and State of Hawaii.

2. The legal owner of the property is Kahualani Corporation. The Petitioner is the purchaser of the property under an agreement of sale with Kahualani Corporation. Makai Development Corporation has been authorized by Kahualani Corporation to file the subject petition, and Clifford H. F. Lum, Esq., has been authorized by the Petitioner to act on its behalf in all matters relating to the petition.

Procedural Matters.

3. Petitioner filed a petition pursuant to law and the rules of the Planning Commission relating to special management area (SMA) use permits on May 28, 1981.

4. On January 14, 1982, the Planning Commission decided to hold a contested case hearing on the petition upon a prior request by the Friends of Kamo Point (hereinafter referred to as "Friends"). The Petitioner, the Friends, the Office of Hawaiian (or, in the alternative, the Congress of Hawaiian People), Kahualani Corporation, and the County of Hawaii Planning Department were admitted as parties. Thomas C. Cummings, Jr., was denied standing as a party.

5. On January 28, 1982, the Planning Commission rejected David Roy as a party.

6. On February 9, 1982, the Planning Commission approved the withdrawal of the Planning Department as a party. Public testimony was given in support and in opposition to the proposed development.

7. The contested case hearing was commenced on February 9, 1982, and continued on May 20, June 30, and July 28 of 1982.

Description of the Subject Property.

8. The subject property is located along the makai side of Alii Drive, adjacent and to the south of the Kamoia Point State Historical Park Complex, Kaumalumalu, North Kona, Island, County, and State of Hawaii. The subject property contains an area of 5.4 acres, more or less, is identified by Tax Map Key No. (3)7-7-04:03, and is situated within a special management area as designated by the Planning Commission.

9. The soil found on the subject property is of the Kaimu Series which consists of well-drained, thin organic soils over Aa lava. The surface layer is extremely stony peat about three inches thick. Permeability is rapid, runoff is slow, and the erosion hazard is slight. The existing topography of the property exhibits a gradual and even slope from the shoreline to Alii Drive. Elevations range from approximately two to twenty feet in a makai-mauka direction. Some grading and grubbing occurred on substantial portions of the subject property prior to 1972. The mean annual rainfall for the area is 27 inches. The subject property is currently vacant of any structures and uses. The surrounding land uses include condominium and multiple residential units, single-family dwellings, the Kamoia Point State Historical Park Complex, and vacant

lands. The coastline is characterized by low-lying rocky lava and waterworn boulder beaches.

Petitioner's Proposed Development.

10. The project will contain 38 units distributed within six 44± foot high three-story buildings, including basements. The size of the units will range from 1,472 to 3,112 square feet, exclusive of lanais. Other notable features include two swimming pools, spas, comfort stations, a regulation-sized tennis court, a practice tennis court, community center building, office building, security gate, landscaping, and basement parking.

11. Public access to the shoreline and five public parking stalls serving such access will be provided along the south property line.

12. The General Plan density guidelines call for 24 percent (ground cover ratio); 28 percent (paved area); and 48 percent (open space/landscaping). The proposed development will have a ratio of 23.8 percent (ground cover); 8.31 percent (paved area); and 68.31 percent (open space/landscaping).

13. The minimum setback requirement for this property is 20 feet for the front; 40 feet from the shoreline (rear); and 12 feet from the side property lines for a three-story structure. The plans submitted provide that the closest condominium building to the front property line will be set back 85 ± feet. The swimming pool, at 30 feet, will be the closest structure to the north side property line, while the

condominium buildings will be set back between 71 ± to 80 ± feet to the north property line. The Petitioner intends to maintain a two to one distance to height ratio from the north property line. The closest condominium building from the south side property line will be 21 feet. The closest condominium building will be set back 42 feet from the shoreline. A rock wall is also proposed to be constructed around the perimeter of the development at varying heights from 5 ± to 12 ± feet. Portions of this wall will be used as a retaining wall.

14. According to the Flood Insurance Rate Map (FIRM) that was adopted in May of 1982, the subject property is within the potential tsunami inundation area at a height of 12 feet. To mitigate the impacts of potential flooding and tsunami runup, Petitioner's proposal sets the first-floor living areas of the condominium buildings to elevations of 20 to 28 feet above sea level.

15. Construction is proposed to begin upon the receipt of all governmental permits.

County Plans and Ordinances.

16. The General Plan identifies the subject property as a Minor Resort Area, and its Land Use Pattern Allocation Guide (LUPAG) map confirms this by designating the area for resort uses. Multiple residential units are permitted within this General Plan land use designation.

17. The County zoning designation for the subject property is Resort-Hotel - 1,250 square feet (V-1.25) or

1,250 square feet of land area per unit. Based on this zoning density, a maximum of 188 units may be allowed.

IMPACTS ON RESOURCES OF THE AREA

Natural Resources.

18. Vegetation on the subject property consists mostly of Ekoa with some grass and weed undercover. Endangered plant species are not known to occur on the subject property.

19. The subject property is also not known to be a habitat for endangered or threatened animal species.

Archaeological Resources.

20. In 1973, Paul Rosendahl, through the Bishop Museum, conducted an archaeological survey of the subject property. In 1979, Hawaii Marine Research, Inc., under the direction of Robert J. Hommon, conducted an archaeological and historical reassessment of the archaeological and historic resources identified by Paul Rosendahl.

21. With the exception of the north boundary wall, there are no structural or subsurface sites or features of significant archaeological value on the subject parcel.

22. Though existing features do not have any significant archaeological value, they could be of some visual value. Certain of the better-built stone walls, such as the massive wall along the north boundary, the beach-front retaining wall, and the wall extending along the east boundary of the parcel, could be incorporated as attractive features in landscaping plans.

23. The reassessment report concluded that pre-contact and post-contact archaeological data are not sufficient in quantity or quality to warrant either in-place preservation or salvage excavation of existing features.

24. Archaeological and documentary data are insufficient for a multi-disciplinary study of specific individuals who resided in the subject area and insufficient to indicate a direct functional relationship between the northern and southern portions of Kamo Point.

25. No evidence of the historical, legendary, or mythological importance of Kaumalumalu Makai could be found in the published and unpublished sources which were reviewed in the archaeological study.

26. Historically reliable evidence to refute the conclusions in Dr. Robert J. Hommon's report is lacking, nor is there persuasive evidence to affect the reliability of Dr. Robert J. Hommon's report.

27. The Kamo Point State Historical Park Complex is situated adjacent to and on the north side of the subject property. This complex includes four heiaus; Keolohahihi heiau, Kane Kaheilani heiau, Hale A'ama, and Hale o Kaili; three other sacred areas with special functions; Hale o Kupuna, Hale o Mapuana pool, and the foundation for Kapalama; the house foundation for the residence of Keolonahihi and Kamehameha Ekahi; a surfing grandstand and a sporting area. In addition to these features, others have been mentioned in relation to this complex. These include

Pakiha, residence of Keakealani, Puuhonua, and two other heiaus. These structures lie to the east and north of Kamoā Point. Although some of the heiaus and other features have been described individually by archaeologists Stokes and Reinecke of the Bishop Museum in 1919 and 1930, respectively, and although mention of either individual heiau of place appears in earlier sources, the most extensive description of the complex in its cultural context comes from the map and news articles of Kekahuna in 1956. Kekahuna's map and news articles indicate that the area served not only as a residence and sporting area for royalty, but also, that other special religious functions were performed here. Kekahuna's map of the Kamoā Point complex did not include the Kaumalumalu side of the peninsula except for enclosure 4 on said map and the wall connecting it to the massive wall on the south side of said complex. Said enclosure and connecting wall are noted by Kekahuna as being of recent construction.

28. Sites described in the manuscripts of Kekahuna and Keoki Pinehaka referred to by Dr. Malama Solomon and others were all located and identified as being within that portion of Kamoā Point designated for State park purposes and not within the boundaries of the subject property.

29. The proposed development will not substantially or significantly impact upon the Kamoā Point State Historical Park Complex. Potential impacts can be minimized through conditions of approval.

30. The lack of oral historic data accumulated by interviews does not invalidate the findings and conclusions of the archaeological studies relating to the subject property.

31. The subject property is neither listed on the Hawaii Register or the National Register of Historic Places, nor has it been determined eligible for inclusion on the National Register of Historic Places.

Scenic Resources.

32. The proposed development will not significantly alter and may enhance existing public views to and along the shoreline.

PUBLIC SERVICES AND FACILITIES

Sewage Treatment and Disposal.

33. There currently is no public sewage system serving the area. The Petitioner intends to construct an injection well sewage disposal system in compliance with the State Department of Health's standards. There is no evidence presented that indicates adjacent coastal water and marine life will be significantly affected.

Water.

34. Water is available from the eight-inch waterline along Alii Drive. A water commitment was granted until July 31, 1982.

Firefighting.

35. The Fire Department stated that on-site fire hydrants shall be provided.

Roadway Facilities.

36. Alii Drive, which fronts the subject property, has a right-of-way width of 50 feet with a 22-foot wide pavement with five to six-foot wide gravelled shoulders.

37. In July of 1980, a traffic count was taken by the Petitioner on Alii Drive fronting the subject property. The survey revealed peak flows of 495 cars per hour in both directions at 10:00 a.m. and 690 cars per hour at 4:00 p.m.

38. Alii Drive is adequate to handle the present traffic and traffic to be generated from the proposed development.

39. A number of County highway improvement projects have been outlined in the draft of the Kona Regional Plan. These include widening and resurfacing of Alii Drive, and the Alii Drive realignment which incorporates a 100-foot right of way, four-lane highway, mauka of the existing Alii Drive beginning from Kuakini Highway, North of Wailua Road to Keauhou.

Police Services.

40. No adverse effects upon police services are foreseeable.

RULING ON PROPOSED FINDINGS

Any proposed finding submitted by a party and not already ruled upon, in whole or in part, by the Planning Commission by adoption herein, or by rejection through clearly contrary findings of fact herein, is hereby rejected.

CONCLUSIONS OF LAW

Based on its review of the petition, the evidence produced in the hearings, and the provisions of chapter 205A, HRS, and rule 9 of the Planning Commission's Rules Relating to Administrative Procedures, the Planning Commission concludes:

1. The proposed development will not have any significant or substantial adverse environmental or ecological effects;
2. The proposed development is consistent with the objectives and policies of chapter 205A and Special Management Area guidelines in rule 9; and
3. The proposed development is consistent with the County General Plan, zoning and subdivision codes, and other applicable ordinances.

DECISION AND ORDER

IT IS HEREBY ORDERED that the petition for a Special Management Area Use Permit filed by Makai Development Corporation for the proposed development on the subject property, consisting of approximately 5.4 acres, situated at Kaumalumalu, North Kona, Island, County, and State of Hawaii, identified as Tax Map Key (3)7-7-04:03, is in compliance with chapter 205A, HRS, and rule 9, "Special Management Area Rules and Regulations of the County of Hawaii," and a special management area use permit shall be and is hereby approved and granted; SUBJECT TO THE FOLLOWING CONDITIONS:

1. Petitioner, or its authorized representative, shall be responsible for complying with all of the stated conditions of approval.

2. Plans for the proposed development shall be submitted to the Planning Department and final plan approval, in accordance with Chapter 8 (Zoning Code), Hawaii County Code, be secured within one year from the effective date of the Special Management Area Use Permit for this development.

3. Construction shall commence within one year from the date of receipt of final plan approval and be completed within two years thereafter.

4. With regard to public access, a minimum ten-foot wide mauka-makai walkway to the shoreline from Alii Drive shall be provided along the south side property line. The types of improvements and specific location of the walkway shall be determined at the time of plan approval review. Further, a minimum of five on-site public parking stalls to serve the walkway shall be provided and clearly identified. A shoreline setback variance shall be secured for any improvements to the public access which will be within the 40-foot shoreline setback area. Construction of the public walkway and public parking stalls shall be completed prior to issuance of any occupancy permit.

5. The method of sewage disposal shall meet with the approval of the appropriate government agencies. Further, the private sewage treatment facility shall be more

centrally located on the subject property, rather than towards the north or south property lines, and shall be constructed below the finished grade.

6. A drainage system in accordance with the standards of the Department of Public Works shall be installed.

7. The first floor living areas (i.e., habitable areas) shall be elevated above the potential tsunami inundation level as shown on the Flood Insurance Rate Map (FIRM) prepared by the Federal Insurance Administration.

8. Other than the proposed improvements to the public access to the shoreline, there shall be no improvements, including grading and grubbing, within the 40-foot shoreline setback area. Further, the 40-foot shoreline setback line shall be staked out prior to any work being conducted on the subject property.

9. The archaeological sites identified as the north boundary wall, the two enclosures, and the seawall shall be preserved. A preservation plan incorporating measures for security, stabilization, and interpretation shall be submitted to and approved by the Planning Department as part of the submittals for plan approval review.

10. Should any unanticipated sites be uncovered during land preparation activities, work shall immediately cease and the Planning Department and the State Department of Land and Natural Resources, Historic Sites Program, notified. Work shall not resume until clearance is obtained from the Planning Department.

11. No grading or significant changes in the contour of the land shall occur within ten feet of the base of the north boundary wall.

12. The proposed wall around the perimeter of the proposed development shall be less than six feet in height, except that along that portion fronting Alii Drive, the wall shall not exceed five feet in height.

13. A minimum landscape buffer of four feet between the front property line and the proposed tennis court and the public parking stalls shall be maintained.

14. All structures shall observe the following setbacks from the respective property lines:

- a. Front Property Line: A minimum of 20 feet for all accessory structures. However, the condominium buildings shall observe a minimum two-to-one distance to height ratio.
- b. Rear Property Line: No buildings shall be constructed closer than 40 feet from the certified shoreline.
- c. South Side Property Line: A minimum setback of 20 feet shall be observed.
- d. North Side Property Line: No ancillary structures requiring a building permit shall be located within 30 feet of the north side property line. Further, the condominium buildings shall observe a minimum two-to-one distance to height ratio.

15. That appropriate landscaping, meeting with the approval of the Planning Director, shall be provided along the north property line to further minimize any possible visual impact to the adjacent Kamoia Point State Historical Park Complex.

16. All other applicable rules, regulations, and requirements, including those of the Fire Department and the Department of Water Supply be complied with.

Should any of the foregoing conditions not be met, the permit shall be deemed automatically void.

Dated: Hilo, Hawaii, December 15, 1982 .



ALFREDO ORITA
Chairman