

CERTIFIED MAIL

September 4, 1985

Mr. Sidney Fuke  
Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

Special Management Area (SMA) Use Permit and  
Shoreline Setback Variance Applications  
Applicant: Inns Investment Company  
Tax Map Key: 7-5-08:9

The Planning Commission at its duly held public hearing on August 28, 1985, voted to approve the applications, Special Management Area (SMA) Use Permit No. 226 and Shoreline Setback Variance No. 631, to allow the development of a restaurant complex and related improvements and the demolition of certain structures situated within the 20-foot shoreline setback area, including provision of a public pedestrian access, landscaping and related improvements at Kailua-Kona, Hawaii.

Approval of this request is based on the following:

SMA Use Permit

It has been determined that the proposed development will not result in the loss of valuable natural, cultural or recreational resources of the coastal zone based on the following:

The purpose of Chapter 205-A, Hawaii Revised Statutes and Rule No. 9, Special Management Rules and Regulations of the County of Hawaii is to preserve, protect and where possible, to restore the natural resources of the coastal zone area. As a result, special controls on development within the 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 Special Management Area (SMA) is that the development is consistent

SEP 5 1985

Mr. Sidney Fuke  
September 4, 1985  
Page 2

with the General Plan, Zoning and other applicable ordinances. As presented earlier, the request does conform to the Major Resort Designation of the General Plan as well as the Hotel-Resort zoning classification.

The proposed development is also not anticipated to have any substantial adverse environmental or ecological effects since the subject area has been extensively improved to accommodate the existing Spindrifter Restaurant and the 44-unit Waiaka Lodge. As such, the subject properties do not provide habitats for any endangered plant or animal species nor does the property contain any archaeological features or sites.

The proposed development is not expected to have any substantial adverse effects on the coastal resources, nor adversely affect any access to or along the shoreline. As part of the proposed development, the petitioner intends to provide mauka-makai and lateral public pedestrian shoreline access including signage. Therefore, with regards to public access to and along the shoreline, this situation will improve the development of this project. It should also be noted that any potential adverse effects on the off-shore water quality will be mitigated through compliance with existing regulations.

There will be some measure of visual impact created by this development, however, the visual impact is expected to be far less obtrusive than the present situation. The demolition of the two, two-story Waiaka Lodge structures and the construction of the proposed 2-story restaurant complex will provide for a better mauka-makai view place from Alii Drive.

Further, 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. Any potential runoff or discharge which could reach ocean waters will be handled by on-site improvements. Further, negative impacts on the local water quality resulting from soil erosion and runoff during demolition and construction phases can be adequately mitigated through compliance with existing ordinances and regulations.

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 205A, HRS, or with the intent of Rule No. 9.

#### Shoreline Setback Variance

The Shoreline Setback Variance is being recommended for approval based on the following findings:

Mr. Sidney Fuke  
September 4, 1985  
Page 3

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of the improvements have disturbed the natural shoreline processes and have caused erosion of the shoreline. To prevent unnecessary encroachment of structures and other improvements upon the shoreline, the Legislature felt that it is in the best interest of the public to establish shoreline setbacks and to regulate the uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be required to be done or constructed within the shoreline setback area for the protection of certain shoreline properties and their actions and improvements. In recognizing this need, the Legislature authorized the respective authorities within the various counties, in this case, the Planning Commission, to grant variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205-35(b) of the Hawaii Revised Statutes, and Section 8.9 of the Planning Commission's Rule No. 8, relating to Shoreline Setback, the Planning Commission may grant variances for certain actions and improvements within the shoreline setback area if it is found that:

1. Such structures, activities, or facilities is in the best public interest; or
2. Hardship will be caused to the applicant if the proposed structure, activity or facility is not allowed on that portion of the land within the shoreline setback.

The proposed demolition of structures which now exist within the shoreline setback area and the establishment of a delineated mauka-makai and lateral public pedestrian shoreline access are clearly in the public interest. The removal of the structures from the shoreline setback area and the establishment of the walkway will increase the public's awareness of a right-of-way to and along the shoreline.

Further, the removal of the non-conforming structures from the shoreline setback area will implement the open space intent of the shoreline setback provisions.

The proposed development will enhance the scenic quality of the coastline.

Based on the foregoing, it is therefore determined that the proposed demolition of the non-conforming structures and the establishment of a public pedestrian shoreline access with related improvements are consistent with the purpose and intent of Rule

Mr. Sidney Fuke  
September 4, 1985  
Page 4

No. 8 of the Planning Commission, relating to Shoreline Setback to reduce the encroachment of structures upon the shoreline setback area.

Approval of this SMA Use Permit and Shoreline Setback Variance request is subject to the following conditions:

1. The petitioner, successors or its assigns shall be responsible for complying with all of the stated conditions of approval.
2. Plans shall be submitted for Final Plan Approval within one year from the effective date of SMA and SSV Permits. *August 28, 1986*
3. Construction, including the demolition of the structures within the shoreline setback area, shall commence within one year from the date of receipt of Final Plan Approval and be completed within two years thereafter.
4. A minimum 4-foot wide mauka-makai public pedestrian easement and a lateral coastal access to and along the shoreline shall be provided. The width and type of improvements within the public pedestrian easement and coastal access, their specific locations, and signage related to public access shall be reviewed and approved by the Planning Director. Said easement and access shall be recorded to provide a perpetual right of pedestrian access to the public provided that the location of the mauka-makai access may be relocated in the year 2000 based on the mutual agreement of the owner and Planning Director in the year 2000. A copy of the recorded access document shall be filed with the Planning Department prior to occupancy. Construction of the public pedestrian access shall be completed prior to issuance of an occupancy permit for the proposed development.
5. The nonconforming improvements presently part of the Spindrifter Restaurant and located within the Shoreline Setback area shall be permitted to remain through the duration of the petitioner's present lease with the present owners of the Spindrifter Restaurant provided that there shall be no expansion of these improvements (although maintenance shall be permitted) and provided that within a year of termination of the petitioner's present lease with the present owners of the Spindrifter's Restaurant the lateral access easement between the Spindrifter Restaurant and the shoreline shall be provided.

Mr. Sidney Fuke  
September 4, 1985  
Page 5

6. Should any unanticipated archaeological or historic features be uncovered during the construction activities, all work at that particular area shall cease immediately and the Planning Department notified. Work shall not resume until clearance has been obtained from the Planning Department.
7. Consolidate TMK parcels 7-5-08:9 and 19.
8. Comply with all requirements of the Department of Public Works relative to Flood Ordinance No. 778.
9. Curbs, gutters and sidewalks shall be provided throughout the length of the property along Alii Drive in accordance with the requirements of the Department of Public Works.
10. Comply with all other applicable rules, regulations, and requirements.
11. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, these permits shall be void.

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

Sincerely,

*Barbara Koi*

Barbara Koi, Vice Chairman  
Planning Commission

cc: Alan Beall The Beall Companies, 2003 Kalia Rd., Suite 22K, Honolulu 96815  
Dwight C. Belt P.O. Box 5483, K-K 96745  
DLNR  
DPED, CZM Program w/background  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
County of Hawaii, Kona Office

bcc: Plan Approval Section