

CERTIFIED MAIL

January 7, 1986

Mr. William F. Mielcke
Vice President
Mauna Kea Properties, Inc.
P. O. Box 218
Kamuela, HI 96743

Dear Mr. Mielcke:

Mauna Kea Properties, Inc.
Change of Zone (R-85-30)
Special Management Area Use Permit (SMA 85-16) ✓ 231
Special Management Area Use Permit (SMA 85-17) 232
Tax Map Key 6-2-1:51 (por.), 62, 78 & 79;
6-2-2:12 & 13; and 6-6-2:37 & 38

The Planning Commission at its meeting on December 30, 1985, voted to recommend approval to the County Council on the Change of Zone application. The Planning Commission also voted to approve the various other permits mentioned above.

The approval recommendation for change of zone application is subject to the following conditions:

- A. The petitioner, successors or its assigns shall comply with the stated conditions of approval.
- B. As conditioned by the State Land Use Commission, the area mauka of the Queen Kaahumanu Highway shall be zoned in two increments as spelled out in that Commission's Decision and Order.
- C. The petitioner, successors or assigns shall be responsible for satisfying a basic housing requirement by providing or causing the provision of affordable housing units to meet the direct and indirect resort hotel employee housing demands generated by the resort development or by undertaking other related mitigation measures, such as employee training. Prior to Final Plan Approval, an affordable housing need study shall be prepared and submitted to the Planning Director and the Hawaii County Housing Agency estimating the resort housing demand to be generated by the proposed hotel development. The Planning

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Director and the Hawaii County Housing Agency may adjust the resort hotel employee housing requirement based on the findings contained in the report and other applicable information. Prior to commencing construction of the hotel, the manner in which the required affordable employee housing units or other related mitigation measures are to be provided shall meet with the approval of the Planning Director and the concurrence of the Hawaii County Housing Agency. Furthermore, the requirements of this condition, including the provision of the required employee housing units or other related mitigation measures, shall be complied with prior to the hotel commencing operation. The satisfaction of the housing requirements imposed by the State Land Use Commission shall count towards the fulfillment of the housing requirement imposed by this condition.

- D. All residential units makai of the Queen Kaahumanu Highway be connected to a sewage plant, either public or private, and that no cesspools be allowed within the same area.
- E. Drainage system(s) shall be installed in accordance with the requirements of the Department of Public Works.
- F. With the exception of the main entry road for the proposed development, all accesses shall be from the interior roadway system. Except for the main entry road, no direct access from any proposed lots shall be permitted onto the Queen Kaahumanu Highway.
- G. Channelized intersection improvements, including turning lanes and acceleration/deceleration lanes, shall be provided at the intersection of Queen Kaahumanu Highway and the proposed development's main entry road, meeting with the approval of the State Department of Transportation, Highways Division.
- H. The proposed golf course shall be available for play concurrently or prior to the opening of the proposed hotel.
- I. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Department notified. No work within the affected area shall resume until clearance is obtained from the Planning Department.
- J. All other applicable rules, regulations and requirements, including those of the Department of Water Supply shall be complied with.

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The Planning Director may administratively grant extensions to the foregoing time conditions. Further, should any of the conditions not be met or complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.

The other permits were approved by the Commission subject to the following conditions:

A. SMA Use Permit 85-16

1. The applicant, successors or its assigns shall be responsible for complying with all of the stated conditions of approval.
2. Plans for the proposed hotel and related improvements shall be submitted to the Planning Department for Plan Approval review within two years from the effective date of the Special Management Area (SMA) Use Permit or after the termination of all legal proceedings challenging the permit, whichever is later. Construction of the proposed hotel and related improvements shall commence within three years from the date of receipt of Final Plan Approval and be completed within three years thereafter.
3. Plans for the first phase development of the condominium project referred to as "The Bluffs" shall be submitted for Plan Approval review within two years from the effective date of approval of the permit or after the termination of all legal proceedings challenging the permit, whichever is later. Construction of the first phase shall commence within three years from the date of receipt of Final Plan Approval and be completed within three years thereafter. Plans for the subsequent phase or phases shall be submitted for Plan Approval review within two years from the date of completion of the prior phase or phases. Construction thereof shall commence within three years from the date of receipt of Final Plan Approval of the applicable phase or phases and be completed within three years thereafter.
4. Plans for the beach club shall be submitted for Plan Approval review within three years from the effective date of the permit or after the termination of legal proceedings challenging the permit, whichever is later. Construction shall commence within three years from the date of receipt of Final Plan Approval and be completed within three years thereafter.
5. Archaeological/historic preservation and interpretive management plans for both the sites proposed for

- preservation (identified as sites number 50-10-05-5629, 50-10-05-5630, and 50-10-05-8018) and any additional sites designated by the Planning Director for preservation shall be submitted for the review and approval of the Planning Director prior to the submittal of plans for Plan Approval.
6. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Department notified. No work within the affected area shall resume until clearance is obtained from the Planning Department.
 7. All proposed buildings shall observe a minimum setback of 100 feet from the edge of the fairways/greens/tee areas of the abutting golf course. If deemed necessary, additional setbacks or other mitigating measures, such as additional landscaping along certain portions of the golf course boundaries, may be imposed at the time of Plan Approval review.
 8. For the purpose of public access to the shoreline, the applicant shall provide both access to the shoreline and 40 public shoreline parking stalls on the South Kohala Resort. An easement shall be recorded with the State Bureau of Conveyances for both the public shoreline access and parking stalls. The location, timing of construction and/or availability, restrictions on use and related signage for both the public shoreline access and parking shall be subject to the approval of the Director. Additional public shoreline access and parking requirements can be imposed in conjunction with subsequent SMA permits, if any are ever subsequently applied for by the permittee, successors or its assigns.
 9. As part of the Plan Approval process, the applicant shall also include a landscaping plan which should include generous planting of trees, shrubbery and landscaping around the proposed hotel and condominium project in order to minimize any possible visual impact from the Queen Kaahumanu Highway and the shoreline.
 10. At no time shall the applicant be permitted to rope off or partition any portion of Hapuna beach, or place any signs or devices that would, directly or indirectly, either restrict public use of the beach or give the impression that any portion of the beach is either solely or primarily for resort guests or residents. Lounging chairs or other equipment used by resort and hotel residents and guests on the beach shall be permitted only if they are transported

to and from the beach by the resort and hotel staff, residents and guests in conjunction with their use. In order to prevent the appearance of a private beach enclave, lounge chairs shall not be permitted to be either set up in advance of use or left on the beach after they are used.

11. At no time shall the applicant be permitted to conduct food and beverage service, banquets, meetings, sporting events, picnics, barbecues, luaus or other social activities either on any portion of Hapuna beach or within the 40-foot shoreline setback area and an additional 20 feet mauka of the shoreline trail, whichever is further mauka.
12. At no time shall the applicant be permitted to place or build any structure, concession stand or facility either on Hapuna Beach; or in any flood plain designated on the Flood Insurance Rate Map as part of the 100 year flood zone and identified as zone A5; or within the 40-foot shoreline setback area and an additional 20 feet mauka of the shoreline trail, whichever is further mauka, for the purpose of renting, storing, and selling of surfboards, jet skis, water skis, lounge chairs, beach towels, beach umbrellas, boogie boards, snorkels, masks, beach balls, sun tan lotions, tee shirts, food or beverages of any description, or any other items reasonably calculated to serve the needs of hotel guests, residents or the general public. Beach and water equipment that is prohibited by either State or County regulations either at Hapuna Beach State Park or the adjoining beach and ocean area shall not be made available to or used by hotel guests or resort residents.
13. At no time shall the applicant be permitted to use either any portion of the public beach or the area within the 40-foot shoreline setback area and 20 feet mauka of the shoreline trail, whichever is further mauka, for the above mentioned purposes by utilizing mobile or movable stands, carts or devices.
14. Furthermore, no activities or uses are permitted within the 40-foot shoreline setback area unless those activities are permitted either by Hawaii Revised Statute 205 Part 2 or as part of a shoreline setback variance. This is not to be construed either as a requirement for a Shoreline Setback Variance as part of this permit or as a requirement for the development of the South Kohala Resort.
15. In addition to the above, the applicant shall be prohibited from doing anything that would be contrary to the intent of

these conditions in maintaining Kapuna Beach as a public beach.

16. A drainage system shall be installed in accordance with the requirements of the Department of Public Works.
17. All residential and hotel units be connected to a sewage plant, either public or private, and that no cesspools be allowed in the SMA area.
18. The use of pesticides and herbicides shall conform with the applicable regulations of appropriate governmental agencies.
19. The petitioner, successors or assigns shall be responsible for satisfying a basic housing requirement by providing or causing the provision of affordable housing units to meet the direct and indirect resort hotel employee housing demands generated by the resort development or by undertaking other related mitigation measures, such as employee training. Prior to Final Plan Approval, an affordable housing need study shall be prepared and submitted to the Planning Director and the Hawaii County Housing Agency estimating the resort housing demand to be generated by the proposed hotel development. The Planning Director and the Hawaii County Housing Agency may adjust the resort hotel employee housing requirement based on the findings contained in the report and other applicable information. Prior to commencing construction of the hotel, the manner in which the required affordable employee housing units or other related mitigation measures are to be provided shall meet with the approval of the Planning Director and the concurrence of the Hawaii County Housing Agency. Furthermore, the requirements of this condition, including the provision of the required employee housing units or other related mitigation measures, shall be complied with prior to the hotel commencing operation. The satisfaction of the housing requirements imposed by the State Land Use Commission shall count towards the fulfillment of the housing requirement imposed by this condition.
20. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. These efforts shall reflect the industry standards used by the State of Hawaii in construction projects.
21. The contractor for the hotel site shall make its best effort to minimize any noise impact that construction activities may potentially have on users of Kapuna Beach.

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22. All other applicable rules, regulations and requirements shall be complied with.
23. The Planning Director may administratively grant extensions to the foregoing time conditions.
24. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion after the Planning Director has given the permittee notice, this permit shall be void.

B. SMA Use Permit 85-17

1. The applicant, successors or its assigns shall be responsible for complying with all of the stated conditions of approval, including those applicable conditions spelled out in the accompanying change of zone.
2. The permit shall not become effective until the final approval of the accompanying change of zone.
3. Subdivision plans for the proposed 10-lot residential subdivision referred to as "The High Bluffs" shall be submitted within two years from the effective date of approval of the Special Management Area (SMA) Use Permit or after the termination of all legal proceedings challenging the permit, whichever is later. Final subdivision approval shall be secured within one year from the date or receipt of Tentative Subdivision Approval.
4. Archaeological/historic preservation and interpretive management plans for either any sites proposed for preservation or any sites designated by the Planning Director for preservation shall be submitted for the review and approval of the Planning Director prior to the submittal of plans for Plan Approval.
5. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Department notified. No work within the affected area shall resume until clearance is obtained from the Planning Department.
6. A drainage system shall be installed in accordance with the requirements of the Department of Public Works.

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7. All residential and commercial units be connected to a sewage plant, either public or private, and that no cesspools be allowed in the SMA area.
8. The use of pesticides and herbicides shall conform with the applicable regulations of appropriate governmental agencies.
9. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. These best efforts shall reflect the industry standards used by the State of Hawaii in construction projects.
10. All other applicable rules, regulations and requirements shall be complied with.
11. The Planning Director may administratively grant extensions to the foregoing time conditions.
12. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion after the Planning Director has given the permittee notice, this permit shall be void.

A requirement, as part of our recommendation to the County Council, is the inclusion of a legal description of the subject area in map and written form by metes and bounds. Please submit such a description to us as soon as possible so that the application can be forwarded to the Council with a minimum of delay.

The final Decision and Order will be forthcoming under separate cover.

Should you have any questions regarding the above, please feel free to contact the Planning Department at 961-8288.

Sincerely,

Barbara A. Koi

Barbara A. Koi
Chairperson, Planning Commission

cc: James Bell
DLNR
DFED, CZM Program w/Background
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Hawaii County Services, Deputy Managing Director's Office

bcc: Plan Approval Section