

CERTIFIED MAIL

February 27, 1989

Mr. Thomas Tibbles, A.I.A. and
Mr. William R. Babbitt, D.D.S., M.D.
P. O. Box 3071
Kailua-Kona, HI 96745-3071

Dear Messers. Tibbles and Babbitt:

Special Management Area Use Permit
and Change of Zone Applications
Tax Map Key 7- -18:30, 31, & 32

The Planning Commission at its duly held public hearing on February 22, 1989 voted to send a favorable recommendation on the change of zone application to the County Council and, also, to approve the SMA Use Permit application, Special Management Area Use Permit No. 283, with conditions.

The findings are as follows:

CHANGE OF ZONE

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals, policies, standards, and courses of action. It is also a graphic depiction of the physical relationships among the various land uses. The LUPAG map establishes the basic land use pattern for areas within the County. The LUPAG map designates the property for Medium Density Urban Development. Such a designation may allow village commercial uses. Therefore, the requested Village Commercial (CV) zoning does conform to the General Plan land use designation for the area.

An evaluative corollary of the LUPAG map is the policy analysis approach. In order to consider an area for any type of zoning designation, the applicable goals, policies and standards of the General Plan must be adequately addressed. It is only through such a comprehensive policy analysis approach that evaluations and decisions can be made to better time or stage developments to achieve growth determined by the General Plan

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and related planning documents. The implications of these evaluations and decisions must also be considered as they may have an impact on other similar areas in the County.

The requested zone change for its intended purpose would complement the goals of the commercial element of the General Plan which is "To provide for commercial developments that maximizes convenience to users." As one of its policies, the General Plan further states that the "distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs." The General Plan also states that "appropriately zoned lands shall be provided as the need arises."

While the Kona Regional Plan and the Kailua Village Design Plan suggest residential uses on the property, conditions have changed since these plans were initially reviewed and adopted. Because of recent demands for additional commercially zoned lands, the area along and in the vicinity of Lunapule Road has been determined to be a suitable location for certain commercial uses, provided that the current roadway is improved. The properties at both makai corners of Lunapule Road and Alii Drive, as well as at the mauka corner of Lunapule Road and Kuakini Highway, are zoned CV-10. Therefore, the granting of this particular change of zone request would be consistent with the current land use policy for the area.

All essential utilities and services are available to the property. Further, the applicants have committed to the provision of curb, gutter and sidewalk and pavement improvements to Lunapule Road. Therefore, the request would complement the Land Use Element of the General Plan that states "Zoning requests shall be reviewed with respect to General Plan designation, district goals, State Land Use District, compatibility with adjacent zoned uses, availability of public service and utilities, access, and public need." The General Plan further states that areas to be considered for rezoning "shall have basic improvements and amenities necessary for immediate use."

Based on the foregoing, it is determined that approval of the subject request would result in an appropriate land use pattern that will further the public necessity and convenience and the general welfare.

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SMA USE PERMIT

The purpose of Chapter 205-A, Hawaii Revised Statutes and Rule No. 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. 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 (1) of the criteria for approving a development within the Special Management Area (SMA) is that the development is consistent with the General Plan, Zoning and Subdivision Control Codes and other applicable ordinances. As presented earlier, the request does conform to the General Plan which designated the subject area for Medium Density Urban Development.

The proposed development is also not anticipated to have any substantial adverse environmental or ecological effects. The property is not known to contain any unique ecological systems, nor provide habitats for any endangered plant or animal species.

The proposed development is not expected to have any significant adverse effects on the coastal resources, nor adversely affect any existing access to the shoreline. The property is situated mauka of Alii Drive, a distance of approximately 500 feet at its nearest point from the shoreline. Further, any potential adverse effects on the off-shore water quality will be mitigated through compliance with existing regulations.

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 the shoreline 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. Further, negative impacts on the local water quality resulting

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from soil erosion and runoff during site preparation and construction phases are unlikely due to the property's distance to the shoreline.

All other essential utilities and services, including water, are or will be made available to the subject property. In this regard, the applicants have committed to and will be required to make certain improvements to Lunapule Road.

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 No. 9.

The favorable recommendation to the County Council on the change of zone application and approval of the SMA Use Permit application are subject to the following conditions:

- A. The applicants, successors or assigns shall comply with all of the stated conditions of approval.
- B. The properties shall be consolidated within one year from the effective date of approval of the change of zone.
- C. Final Plan Approval for the proposed development shall be secured within one year from the effective date of the change of zone. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum forty-five days prior to the date by which plan approval must be secured.
- D. Construction shall commence within one year from the date of receipt of Final Plan Approval and be completed within three years thereafter.
- E. A drainage system shall be installed in accordance with the requirements of the Department of Public Works.
- F. A 10-foot wide road widening strip along the entire frontage of Lunapule Road shall be dedicated to the County prior to receipt of final consolidation approval.
- G. Curbs, gutters, and sidewalks and pavement improvements shall be constructed along the entire frontage of Lunapule

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Road. Further, there shall be a tie-in with the existing pavement on both ends of the property. These improvements shall meet with the approval of the Department of Public Works and be provided prior to receipt of an occupancy permit.

- H. Should any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, paving or walls be encountered, work in the area affected shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigating measures have been taken.
- I. All other applicable laws, rules, regulations and requirements be complied with, including those of the Department of Water Supply, Fire Department and the State Department of Health.
- J. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances: 1) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone; and 4) 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); and 5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area to its original or more appropriate designation.

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

Sincerely,



Gary Mizuno
Chairman, Planning Commission

xc: Department of Public Works
Department of Water Supply
Planning Office - Kona
DLNR
DBED, CZM Program w/background
Real Property Tax Division

bcc: Plan Approval Section