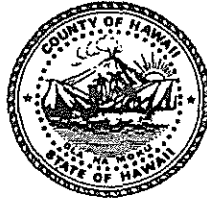


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

SEP 26 2001

Francis Jung, Esq.
75-170 Hualalai Road, Suite D214
Kailua-Kona, HI 96740

Dear Mr. Jung:

Revocation of Special Management Area (SMA) Use Permit No. 297
Applicant: Weiser & Jung Developments, Inc.
Tax Map Key: 7-5-20:21

The Planning Commission at its duly held meeting on September 7, 2001, voted to revoke Special Management Area (SMA) Use Permit No. 297, issued to Weiser & Jung Developments, Inc., which allowed the construction of a 34-unit condominium project and related improvements. The property is located along the makai side of Alii Drive, adjacent to and south of the Casa de Emdeko Condominium Complex, Puapuaa, North Kona, Hawaii.

The applicant has not completed the project in a timely fashion; therefore, SMA Permit No. 297 is hereby revoked.

Should you have questions regarding the above, please contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,

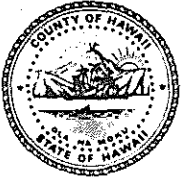
Geraldine M. Giffin, Chairman
Planning Commission

Lweiser&jungrevocation01pc

cc: Department of Public Works
Department of Water Supply
Real Property Tax Division
Planning Department – Kona
DBEDT – CZM Program
Department of Land and Natural Resources
Civil Defense Agency
Mr. Norman Hayashi
Mr. Jeffrey Darrow
Dennis Krueger, Esq.

008630

SEP 26 2001 [initials]



Planning Commission

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

LARRY S. TANIMOTO

~~BERNARD K. KAWAOKA~~

Mayor

CERTIFIED MAIL

April 25, 1990

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

Dear Mr. Fuke:

Special Management Area Use Permit Application
Weiser & Jung Developments, Inc.
TMK: 7-5-20:21

The Planning Commission at its duly held public hearing on April 11, 1990, voted to approve the above application, Special Management Area (SMA) Use Permit No. 297, to allow the development of a 34-unit condominium project and related improvements along the makai side of Alii Drive, adjacent to and south of the Casa de Emdeko Condominium Complex, Puapuaa, North Kona, Hawaii.

The Commission also voted to revoke SMA Use Permit No. 155 previously granted for this project to allow the development of a 25-unit condominium project and related improvements.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205-A, Hawaii Revised Statutes, and Rule 9, Special Management Area Rules and Regulations of the County of Hawaii, which is to preserve, protect, and, where possible, to restore the natural resources of the coastal zone areas. The permit is being requested to allow the construction of a 34-unit condominium building and related amenities.

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,

APR 25 1990

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which designates this area for Medium Density Urban development. Further, with its Multiple Family Residential zoning (RM-1.5), the area is appropriately zoned for the proposed use. The request is also consistent with the Kona Regional Plan Land Use Concept Map which designates the property for multiple residential uses.

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." 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. Any potential runoff or discharge as a result of the project can be handled by on-site improvements as may be required by the Department of Public Works. Negative impacts resulting from soil erosion and runoff during site preparation and construction phases are unlikely due to the very thin soil cover and the pahohoe bedrock. However, should erosion and runoff occur, they can be adequately mitigated through compliance with existing regulations.

The proposed development should not have significant adverse impacts on coastal ecosystems or public access along the shoreline. The applicant intends to create a 10-foot wide pedestrian easement from Alii Drive to the shoreline. Since comments from the Police Department and the Department of Public Works reflect the hazardous and illegal parking conditions along the shoulders of Alii Drive, it is recommended that the applicant provide public parking stalls on-site (1 stall:10 units) in conjunction with the pedestrian access to the shoreline. Aware of the constraints of this parcel, the public access condition further contains an option to provide a cash contribution in-lieu of access. This option is being provided because of the very close proximity of other shoreline accesses within the area. It may be more desirable to continue placing monies into the existing fund started by Royal Seacliff's contribution earmarked for the North Kona district. These monies can be spent improving the public access situation in this area.

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The two archaeological sites identified within the project site have been assessed as being significant for its informational value. No further work was recommended for the two mounds. This approval is conditioned upon notification of the Planning Department and appropriate action should any unidentified sites or remains be found before or during construction activities.

While viewplanes will be impacted by the construction of a condominium development on lands currently vacant, there will be narrow setback corridors between the Kona Isle and Casa de Emdeko condominiums. Further, during plan approval review the balance of open space and building coverage will be evaluated.

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 Zone Management and Rule No. 9 of the Planning Commission relating to Special Management Area.

Approval of this request is subject to the following conditions:

1. The applicant, its successors, or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Department within one year from the date of approval of the permit. To assure adequate time for plan 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. No parking variance from the Code shall be applied for or granted. Plans shall identify structures, landscaping, interior driveway circulation, and parking stalls associated with the proposed development.
3. Construction of the condominium project and related improvements shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two years thereafter.

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4. 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.
5. Access to the subject property from Alii Drive shall meet with the approval of the Department of Public Works.
6. A public access plan, including a 10-foot wide mauka-makai access, designated lateral shoreline access, public parking stalls (at a ratio of 1 stall for every 10 units), signage, and related improvements shall be submitted to and approved by the Planning Director prior to Final Plan Approval. All required improvements shall be in place prior to the issuance of a certificate of occupancy for any portion of the development. An easement for accesses and parking area shall be submitted to the Planning Director for approval and recorded with the State Bureau of Conveyances. A copy of the recorded easement document shall be transmitted to the Planning Director. In lieu of the provision of public access and parking, a cash contribution may be deposited with the County of Hawaii Finance Director prior to issuance of a building permit for any portion of the development. The amount of said contribution shall be equivalent to the estimated cost of a 10-foot wide pedestrian easement and improvements thereon, including any required parking stalls, running the length of the property from Alii Drive to the shoreline. The amount of said contribution shall be determined by the Planning Director or, at the request of the petitioner, an independent land appraiser prior to final plan approval. Should an independent land appraiser be used, the cost of the appraisal shall be borne by the petitioner. Said contribution shall be deposited into a public access fund for the North Kona District and shall be used to acquire, maintain, or improve shoreline accesses in the North Kona District.
7. 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.

*Rec'd. recorded
2/6/91*

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8. The 40-foot shoreline setback line shall be staked by a registered surveyor prior to any grading or grubbing activity. A letter confirming the staking shall be submitted to the Department.
9. Comply with all other applicable laws, rules, regulations, and requirements including those of the Departments of Public Works and Health.
10. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval 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.
11. An 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 applicant, successors, or assigns and that are not the result of their fault or negligence; b) 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.

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.

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

Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

xc: Weiser & Jung Developments, Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
DBED, CZM Program w/background
DLNR
Civil Defense