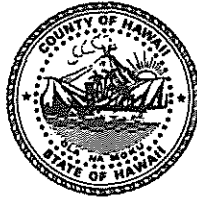


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
Z 095 323 456

August 15, 1996

Philip Y. Ho, President
Nansay Hawaii, Inc.
841 Bishop Street, Suite 1000
Honolulu, HI 96813

Dear Mr. Ho:

Special Management Area Use Permit Application
(Docket No. 90-15) (SMA 305)
Applicant: Nansay Hawaii, Inc.
Tax Map Key: 7-3-9:3 and 16

The Planning Commission at its duly held public hearing on August 1, 1996, voted to accept your request to withdraw the above-referenced application as requested in your letter dated July 3, 1996.

SMA 305 would have allowed the construction of an 800-room hotel, and a 250-room hotel, 18-hole golf course and golf clubhouse, 330 multiple family residential units, 380 single family residential units, tennis and athletic club, beach clubs, artisan's village, child activity center, public park/access, maintenance and wastewater treatment plant, other resort infrastructure and related improvements. The Commission approved SMA 305 on November 8, 1990; however, the decision was subsequently appealed to the Circuit Court of the Third Circuit. By Decision and Order dated June 7, 1991, the Court held that the permit be remanded to the Commission for a contested case hearing. In July 1991, the Planning Commission and Nansay Hawaii, Inc. filed appeals to the Hawaii Supreme Court on the existing court order. On August 31, 1995, the Hawaii Supreme Court reversed the Commission's decision and remanded the case to the Commission for a contested case hearing. On January 18, 1996, Nansay Hawaii, Inc. filed an application with the United States Supreme Court for a writ of certiorari asking the Court to review the Hawaii Supreme Court's opinion. Subsequently on April 22, 1996, the United States

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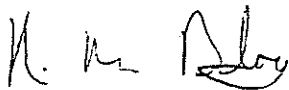
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Philip Y. Ho, President
Nansay Hawaii, Inc.
Page 2
August 15, 1996

Supreme Court declined to hear the application. The subject properties are located makai of the Queen Kaahumanu Highway and north of the Kaloko-Honokohau National Historical Park, Kohanaiki, North Kona, TMK: 7-3-9:3 & 16.

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

Sincerely,

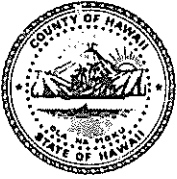


Kevin M. Balog, Chairman
Planning Commission

AK:syw

LNansa01.syw

cc: The Honorable Stephen K. Yamashiro, Mayor
Mr. Keith Kato
Roy A. Vitousek, III, Esq.
Department of Public Works
Department of Water Supply
Corporation Counsel
Real Property Tax Office
Office of State Planning, CZM Program
Department of Land and Natural Resources



Planning Commission

Larry S. Tanimoto
Mayor

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

CERTIFIED MAIL

November 19, 1990

Mr. Roy A. Vitousek III
Cades Schutte Fleming & Wright
Suite B-303, Hualalai Center
75-170 Hualalai Road
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

Special Management Area Use Permit Application
Nansay Hawaii, Inc.
Tax Map Key 7-3-09:3 & 16

The Planning Commission at its November 8, 1990, meeting voted to accept the applicant's Motion for Reconsideration of the Planning Commission's decision to defer action on the application. The Commission also denied the requests by Public Access Shoreline Hawaii (PASH) and Angel Pilago for contested case hearing as it has been found that their interests are not clearly distinguishable from that of the general public.

The Planning Commission also voted to approve the application, Special Management Area Use Permit No. 305 to allow the construction of an 800-room hotel and a 250-room hotel, 18-hole golf course and golf clubhouse, 330 multiple family residential units, 380 single family residential units, tennis and athletic club, beach clubs, artisan's village, child activity center, public park/access, maintenance and wastewater treatment plant, other resort infrastructure, and related improvement at Kohanaiki, North Kona, Hawaii.

Approval of the SMA Use Permit is based on the following:

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. Therefore, 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.

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One of the criteria for approving a development within the SMA is that it is consistent with the General Plan and zoning designation.

The General Plan is a long range, comprehensive policy document which guides the overall development of the County of Hawaii. As stated in Section 3-16 of the County Charter, the General Plan shall contain a statement of development objectives, standards, and principles with respect to the most desirable use of land within the County for residential, recreational, agricultural, commercial, industrial, and other purposes which shall be consistent with proper conservation of natural resources and the preservation of our natural beauty and historical sites; the most desirable density of population in the several parts of the County; a system of principal thoroughfares, highways, streets, public access to the shorelines, and other open spaces; the general locations, relocations and improvement of public buildings, the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, sewers, light, power, transmit, and other purposes; the extent and location of public housing projects; adequate drainage facilities and control; air pollution; and such other matters as may, in the council's judgment, be beneficial to the social, economic, and governmental conditions and trends and shall be designed to assure the coordinated development of the County and to promote the general welfare and prosperity of its people. The Charter further states that "The (County) council shall enact zoning, subdivision, and such other ordinances which shall contain the necessary provisions to carry out the purpose of the general plan," and that "No public improvement or project, or subdivision or zoning ordinance shall be initiated or adopted unless the same conforms to and implements the general plan."

The proposed development is consistent with the adopted goals, policies, standards, and courses of action as articulated in the General Plan, as amended.

Resort developments are created to satisfy the needs and desires of both visitors and residents. Such areas have basic amenities and attributes which attract the development of visitor accommodations and related facilities. Almost every successful resort area has a harmonious combination of certain characteristics, such as climate, scenery, recreational amenities, level of services, and other man-made facilities. In

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most instances, such as at Kohanaiki, the natural factors have been or are the basis for the development of an area, and the man-made facilities were designed to enhance the area. A resort area should be large enough to provide a concentration of hotel, residential, and recreational amenities which will keep the visitor interested and entertained. It should not be so large, however, as to destroy either the sense of scale or intimacy of leisureliness associated with the area. In light of this, the General Plan does set forth standards for the various types of resort destination areas.

The General Plan identifies the Kohanaiki area, which the property is a part of, as an Intermediate Resort Area. An Intermediate Resort Area is a self-contained resort destination area which provides basic and support facilities for the needs of the entire development. Such facilities include sewer, water, roads, employee housing, recreational facilities, etc. The maximum visitor units within an area designated Intermediate Resort Area is 1,500 rooms. The concept of a self-contained resort area also includes the provision of residential accommodations and commercial activities for long-term visitors as well as for permanent residents. Such facilities are considered to be an integral part of a resort area. The proposed improvements will be in the direction of creating a self-contained resort destination at this section of North Kona.

The Land Use and Resort elements of the General Plan also state that resort uses shall be developed in areas adequately served by essential services and other infrastructure. The area under consideration is or will be provided with all essential utilities and services, including water. The applicant has successfully drilled a well. A second well will also be drilled.

Based on the above, it is felt that the granting of the subject request would complement the policies of the General Plan Land Use and Resort elements which state to "promote and encourage the rehabilitation and utilization of resort areas which are serviced by basic facilities and utilities."

The subject request is also consistent with the Economic element of the General Plan in that the proposed development will provide additional and expanded employment opportunities for residents of the area, as well as the entire island as a whole; will strengthen the existing visitor industry; and will

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provide residents with opportunities to improve their quality of life.

The area under consideration is also appropriately zoned for the proposed 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. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options." The proposed development is not anticipated to have any substantial adverse environmental or ecological effects. Botanical and terrestrial fauna surveys conducted by Char & Associates in 1986, indicate that no endangered or threatened plant species will be affected by the proposed development.

As requested by Change of Zone Ordinance No. 88 159, a draft of an anchialine pond management plan was submitted for review and as part of this application. The objective of the management plan is to: 1) maintain the environmental integrity of the existing ponds; 2) protect and management of this resource to provide educational and interpretive opportunities to the public; 3) control and monitor construction activities so that impacts may be identified and mitigated to avoid detrimental impacts to the pond; and 4) provide a pond manager to implement the management plan and conduct scientific monitoring programs. The draft plan currently establishes a 40-foot buffer zone around each of the ponds. The anchialine ponds on the property will be preserved and, where possible, are being integrated into the development design. Therefore, since none of the ponds are expected to be filled, direct and indirect impacts on the pond resources will be negligible.

A full archaeological reconnaissance survey of the entire Kohanaiki property was conducted in 1986. The applicant intends to preserve all sites recommended by the consulting archaeologist. Further, to implement a condition of the previously mentioned change of zone ordinance, a draft Phase I: Mitigation Plan or Data Recovery, Interim Site Preservation,

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Burial Treatment, and Monitoring was prepared in February 1990 by the applicant's consultant, Paul H. Rosendahl, Ph.D., Inc.

It should be noted that any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Negative impacts on the local water quality resulting from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing ordinances and regulations, as well as proposed conditions of approval.

To further mitigate these concerns, during the change of zone approval, a water quality monitoring plan was required. With these precautionary measures in place, the proposed development is not expected to have any substantial adverse effects on the coastal resources or the environment.

Since the proposed buildings will be constructed a great distance from the highway, they are not expected to substantially impede the mauka-makai view plane from Queen Kaahumanu Highway. Further, since the taller hotel structure setback will be substantially makai of the Queen Kaahumanu Highway, the visual impact of the proposed hotel developments will not be substantial.

Finally, the applicant will provide mauka-makai public accesses, as well as a lateral access, to and along the shoreline. Public parking areas, restrooms, shower facilities, and a beach park pavilion will also be provided. To implement a change of zone condition, the applicant submitted for review A Comprehensive Public Access Plan dated August 1990. The plan proposed a mauka-makai public access to the shoreline, as well as a coastal or lateral "beach trail." As part of its proposal, the applicant also intends to close the jeep trail through its property.

Based on the above, it is determined that the proposed development is consistent with the objectives and policies as provided by Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management, and the Planning Commission's Rule 9 relating to Special Management Area (SMA). Furthermore, if any adverse environmental or ecological effects exist, such effects are clearly outweighed by public health, safety, or compelling public interest.

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Approval of this request is subject to the following conditions:

1. The applicant, successors, or its assigns shall comply with all of the stated conditions of approval.
2. Plans for the first phase of development, including the 800-room hotel, 250-room hotel, and the 18-hole golf course/clubhouse facility, shall be submitted to the Planning Department and Final Plan Approval shall be secured within two years from the effective date of the Special Management Area (SMA) Use Permit. Construction shall commence within one year from the date of receipt of Final Plan Approval and be completed within three years thereafter.
3. Unless a lesser setback is approved by the Planning Director, all proposed buildings, other than those directly related to the golf course operations, shall observe a minimum setback of 100 feet from the edge of the fairways/greens/tee areas of the 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.
4. Fully channelized intersection improvements, including but not limited to deceleration, acceleration, and left-turn storage lanes and streetlighting, shall be provided for at the intersection of Queen Kaahumanu Highway and the proposed main resort entry road meeting with the approval of the State Department of Transportation, Highways Division, prior to the opening of the first hotel. Further, as may be required by the State Department of Transportation, Highways Division, the access road shall be connected to the planned long range frontage road. At that time, the direct access to the Queen Kaahumanu Highway shall be eliminated.
5. All roadways within the proposed development shall be constructed in accordance with the requirements of the Department of Public Works. Curbs, gutters, and sidewalks shall be required to be constructed in areas of likely pedestrian traffic as determined by the Chief Engineer and the Planning Director.

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6. A roadway connection to the adjacent property to the north shall be provided meeting with the approval of the Department of Public Works.
7. A drainage system shall be installed meeting with the approval of the Department of Public Works.
8. All residential, commercial, and hotel units and uses shall be connected to a secondary sewage treatment plant, public or private, meeting with the approval of the appropriate governmental agencies. The secondary sewage treatment plant shall have a stand-by generator to operate the plant in the event of an electrical power outage.
9. An archaeological mitigation plan for archaeological site preservation and data recovery shall be approved by the Planning Department, in consultation with the Department of Land and Natural Resources - Historic Sites Section prior to any land preparation activity being conducted on the property.
10. Should any unanticipated archaeological sites be uncovered during land preparation activity, work within the affected area shall cease and the Planning Director shall be immediately notified. Work within the affected area shall not resume until clearance is obtained from the Planning Director.
11. An emergency preparedness and response plan shall be submitted to the Planning Director and the Civil Defense Agency for review and approval prior to receipt of occupancy for the first hotel.
12. An anchialine pond management plan shall be submitted to and approved by the Planning Director prior to receipt of Final Plan Approval of any of the proposed uses or prior to conducting any land preparation activity in the affected area, whichever occurs first. The Management Plan shall be developed in consultation with the Army Corps of Engineers and the U.S. Fish and Wildlife Service. The objective of its management plan shall be to: 1) maintain the environmental integrity of the existing ponds, 2) protect and manage this resource to provide educational and interpretive opportunities to the public, 3) control and monitor construction activities so that impacts may be

identified and mitigated to avoid any detrimental impacts to the pond, and 4) provide for a pond manager to implement the management plan and conduct scientific monitoring programs. The Management Plan will detail the area of ponds to be preserved, the dimensions of buffer zones surrounding the pond area, allowable activities within the pond areas, if any, and establish a pond management program.

13. Mauka-makai public access(es) shall be provided. A lateral, shoreline public access throughout the length of the property shall also be provided. Public parking shall be established near the shoreline following the ratio of one public parking stall to be provided for every ten hotel, condominium, and residential units. Restroom/shower facilities shall be provided at each mauka-makai public access. Public parking stalls and restroom/shower facilities shall be provided concurrently with the development of the first hotel, residential subdivision, or condominium development, whichever is developed first. An easement shall be recorded with the State Bureau of Conveyances for the public access(es) and parking areas. The location, time of construction and/or availability, restrictions on uses, signage, and related improvements for the public shoreline access(es) and parking areas shall be approved by the Planning Department. In lieu of providing a mauka-makai access and facilities at either the north or south end of the property, the Planning Director may substitute a payment to the County in an amount equal to the cost of such access, parking stalls and restroom/shower facilities, which payment shall be used by the County for the establishment of a public campground in Kona. Use of the mauka-makai and shoreline public access(es) parking stalls and restroom/shower facilities shall be afforded to the public on a 24-hour basis, subject to a public access plan to be approved by the Planning Department. The use of the public access(es) and facilities after sundown shall be primarily for those persons wishing to shore-fish at night. The public access plan shall provide for adequate rules with respect to safety, health, and welfare of the public, including persons who are guests and residents on the resort. The rules may include a system of permits or passes to regulate the use of the access(es) and facilities after sundown.

14. A water quality and marine life monitoring and mitigation plan shall be developed. The plan shall be submitted to and approved by the Planning Department in consultation with the Natural Energy Laboratory of Hawaii, the Hawaii Ocean Science Technology Park, and the National Park Service prior to the issuance of a grading permit and/or prior to any land preparation activity being conducted on the golf course, hotel sites, or condominium site whichever occurs first.
15. The use of pesticides and herbicides shall conform with the applicable regulations of the appropriate governmental agencies.
16. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
17. All utility lines shall be underground.
18. No improvements shall be allowed within the 40-foot shoreline setback area unless a Shoreline Setback Variance has been applied for and granted by the Planning Commission.
19. To ensure that the goals and policies of the Recreational Element of the General Plan are implemented, the Department of Parks and Recreation, upon consultation and with the approval of the Planning Department, may require the provision of public recreational facilities and/or improvements within the project area or the affected districts as appropriate. The preliminary recreational needs determination, if any, shall be established prior to the granting of Final Plan Approval for the proposed golf course and related improvements, and shall be based upon the estimated cost of a similar public facility and/or improvements, less any credits for existing facilities and/or improvements directly attributable to the overall project. The applicant shall provide its required pro rata share in a method not inconsistent with the requirements and criteria found in Chapter 8, Article 1 (Park Dedication Code) of the County Code prior to the opening of the

proposed golf course or any related facility thereto, whichever occurs first.

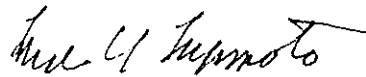
20. Comply with the terms of a Settlement Agreement as presented in Mr. Roy A. Vitousek's (attorney for the applicant) letter of November 2, 1990, to Mr. Kevin Seiter (attorney representing Friends of Kohanaiki, Inc., West Hawaii Surfing Association, and Surfrider Foundation) attached herewith as Exhibit I.
21. All affected conditions imposed by the State Land Use Commission, Ordinance No. 87 52 (General Plan Amendment), and Ordinance No. 88 159 (Change of Zone) shall be complied with.
22. All other applicable laws, rules, regulations, and requirements, including those of the State Department of Health, shall be complied with.
23. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the SMA Use Permit. The report shall address the status of the development and the compliance with the conditions of approval. 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.
24. The Planning Director may administratively grant an extension to the foregoing conditions subject to any of the following circumstances occurring: A) the need for an extension is the result of either unforeseen conditions or are circumstances beyond the control of the applicant, successors, or assigns; 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 foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

Mr. Roy A. Vitousek III
November 19, 1990
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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.

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

Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

xc: Mr. Thomas Yamamoto, Nansay Hawaii, Inc.
Mr. Kevin Seiter
Mr. Jerry Rothstein
Mr. Angel Pilago
Mr. Thomas Fee
Department of Public Works
Department of Water Supply
Civil Defense
County Real Property Tax Division
State Department of Health
State Dept. of Transportation, Highways Division
Planning Office - Kona
OSP, CZM Program w/background
DLNR

Ecc: Plan Approval Section