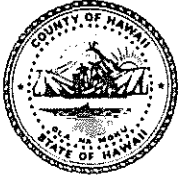


SMA 311



Planning Commission

LORRAINE R. INOUE
Mayor

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

CERTIFIED MAIL

February 15, 1991

Mr. Carl A. Carlson, Jr.
Senior Project Manager
Huehue Ranch Associates, L. P.
Kuakini Towers
75-5722 Kuakini Highway, Suite 107
Kailua-Kona, HI 96740

Dear Mr. Carlson:

Special Management Area Use Permit Application
Applicant: Huehue Ranch Associates, L.P.
TMK: 7-2-04: Portion of 5

The Planning Commission at its duly held public hearing on January 31, 1991, voted to approve your application, Special Management Area (SMA) Use Permit No. 311, to allow construction of the 350-unit Regent Kona Coast Hotel and supporting facilities, and a 43+ lot single family residential subdivision and related improvements. The property is located makai of the Queen Kaahumanu Highway at Uluweoweo Bay, Kukio, North Kona, Hawaii.

Approval of this request 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.

Kuki'o is endowed with one of the finest stretches of sandy beach and shoreline areas in the County of Hawaii. The beach and sand dune provide a distinct scenic and recreational resource for its users. The fact that anchialine ponds have formed a habitat for various biota immediately mauka of the beach enforces the importance of Kuki'o as a natural resource.

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In order to ensure that an open space ambience is maintained along the 1,600 foot shoreline, a 100-foot structural setback from the shoreline is being recommended, unless otherwise approved by the Planning Director. The proposed project covers a total 70+ acres and, therefore, contains more than adequate room for its hotel layout concept. The additional structural setback is also intended to heighten sensitivity toward a public resource that must be preserved. As such, this approval would be consistent with the objective and policies of Chapter 205A and Rule 9 which state:

- * Protect, preserve and where desirable, restore or improve the quality of coastal scenic and open space resources.
- * Ensure that new developments are compatible with the visual environment.
- * Preserve and maintain shoreline open space and scenic resources.

The structural setback also supports the following goals and policies of the General Plan:

- * Protect and effectively manage Hawaii's open space, watersheds, and natural areas.
- * The shoreline of the island of Hawaii shall be maintained for recreational, educational, and/or scientific uses in a manner that is protective of resources and is of the maximum benefit to the general public.

Viewplanes from Queen Kaahumanu Highway will be impacted to a degree given the gentle slope of the land; however, the proposed hotel buildings will be constructed a considerable distance from the highway and beyond the 150-foot Highway planting screen easement required during zoning. Moreover, since the neighborhood garden units will be one- and two-stories high, this development would have considerably less impacts on the mauka to makai viewplane than two hotels originally proposed and allowed by the present zoning.

One of the objectives of Chapter 205A relating to Coastal Zone Management (CZM) is to protect valuable coastal ecosystems and to minimize adverse impact on all coastal ecosystems. As mentioned previously, a major anchialine pond complex and other

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small complexes form the shoreline environs of Kuki'o. A draft of an anchialine pond management plan was submitted for review as part of this application. The objectives of the management plan are 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 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 minimum 40-foot buffer zone around the four-acre pond complex as required by the State Land Use Commission. Other anchialine ponds on the property will be preserved and, where possible, are being integrated into the development design. Since the ponds provide a habitat for numerous aquatic species as well as several endangered avifauna--the Hawaiian stilt or ae'o (*Himantopus himantopus knudseni*) and a single specimen of the Hawaiian duck (*Anas wyvilliana*), it is felt that construction of a boardwalk over the ponds could be inappropriate and may affect the pond's physical and environmental integrity for these and other wildlife species. While public education and awareness are important, it should not outweigh the objectives of pond preservation and protection. We would note that the applicant proposes to develop numerous ponds as an extension of the existing pond complex. Pedestrian access over these man-made ponds would easily serve the purpose of creating the necessary atmosphere for the resort. Thus, a condition of this approval would prohibit construction of boardwalks or accessways over existing anchialine ponds, unless otherwise approved by the Planning Director. The further review and approval of an anchialine pond management plan by appropriate agencies will assure that the objectives of the plan are properly executed. With these considerations, the Coastal Zone Management policy of minimizing disruption of coastal ecosystems will be supported.

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

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proposed development is not anticipated to have any substantial adverse environmental or ecological effects, provided approved management and mitigation plans are implemented. 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. There are hala groves that were referenced in the historical documentation of the archaeological reconnaissance survey report. Because of concerns expressed over their preservation and maintenance, the anchialine pond management plan will incorporate the management of the hala groves.

A full archaeological reconnaissance survey of the entire Kuki'o mauka and makai properties was conducted in 1985. 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 and SMA Use Permit No. 273, a draft Phase I: Mitigation Plan or Data Recovery, Interim Site Preservation, Burial Treatment, and Monitoring was prepared in October 1989 by the applicant's consultant, Paul H. Rosendahl, Ph.D., Inc. The completion of this mitigation plan will satisfy the CZM objective to "protect, preserve and where desirable restore significant historic and cultural resources."

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 address any long-term concerns, a water quality and marine life monitoring and mitigation plan was required at the change of zone and SMA levels. 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.

The applicant will be providing at least one mauka-makai public access to the north, as well as a lateral shoreline access. A second public access to the state disputed parcel is also under negotiation. Finally, the Department of Land and Natural Resources-Na Ala Hele Program has informed that the Kuki'o 1 trail branch, which traverses the entire length of the property in a mauka to makai direction, should be preserved as a

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larger historic trail network. Although the state and county have conditionally required one mauka-makai public access to the shoreline through previous land use approvals, it is evident that there is a need to better coordinate a comprehensive public access plan within this resort. The conceptual plan currently shows a drop-off area mauka of an anchialine pond approximately 660 feet from the shoreline along the northern boundary. Through the submittal of a comprehensive public access plan for the Kuki'o Beach Resort, the Planning Director can assure that a minimum of two mauka-makai accesses will be provided; drop-off/parking areas will be conveniently close to the shoreline; and accesses are spatially balanced around the identified resources. Change of Zone Ordinance No. 88 158 and SMA Use Permit No. 273 required one public shoreline parking stall for every ten hotel and residential units and a restroom/shower facility at the mauka-makai access. The required public access stall count will include all residential units proposed on the mauka and makai sides of Queen Kaahumanu Highway. As with other resort developments, public access parking stalls will be installed when units are constructed. However, there is a need to reserve space for the projected stalls as the units are constructed. The comprehensive public access plan will achieve this goal and will consider overall access to anchialine pond resources as well. The comprehensive public access plan shall be submitted for review and approval to the Planning Department, in consultation with the Department of Land and Natural Resources, prior to plan approval of the hotel development or prior to submittal of subdivision plans for the single-family residential units, whichever comes first.

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

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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 most instances, such as at Kuki'o, 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 Kuki'o area, of which the site 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

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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.

A policy of the General Plan's Housing Element states "Large industries which create a demand for housing shall provide employee housing based upon a ratio to be determined by an analysis of the locality's needs." A Course of Action for the North Kona District mandates that "The County shall require that developments which create a demand for employee housing shall provide for that need." The expansion of the resorts in the South Kohala District resulted in an emergent social concern where a lack of employee housing created overall housing shortages and serious overflow of campers and squatters. This situation is not anticipated to be relieved with the affordable housing or construction housing requirements imposed on this and other developers. Therefore, in an effort to address the employee housing impacts in support of the General Plan, a condition of this approval would require that an employee housing assessment and mitigation plan be submitted to the Planning Department for review and approval prior to receipt of Final Plan Approval for the hotel development. Mitigation measures shall be implemented prior to issuance of a certificate of occupancy for the hotel development. While the employee housing assessment and mitigation plan can be integrated with the affordable housing requirement, the intent of this separate condition is to ensure that employee housing units will be constructed as warranted.

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 drilled a well, which has been pump tested for dependability and water quality. Two additional wells are also being 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."

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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 provide residents with opportunities to improve their quality of life. It is recommended that the job training program provide an upgrading of skills and opportunities and that it be an on-going program.

Through conditions of approval the applicant will be required to install necessary improvements at Queen Kaahumanu Highway prior to issuance of a certificate of occupancy for any portion of the hotel development as required by the Department of Transportation (DOT)-Highways Division. These improvements may consist of a grade separated interchange but has not been included as a specific condition should there be changes that are acceptable to DOT. The frontage road will be constructed within one year from the issuance of a certificate of occupancy, or when required by the Departments of Public Works and Planning.

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).

Approval of this request is subject to the following conditions as amended:

1. The applicant, successors, or its assigns shall comply with all of the stated conditions of approval.
2. Plans for the hotel development shall be submitted to the Planning Department and Final Plan Approval shall be secured within eighteen months from the effective date of the Special Management Area (SMA) Use Permit. Plans shall conform to effective zoned districts at the time of submittal. 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.

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3. Construction shall commence within one year from the date of receipt of Final Plan Approval and be completed within two years thereafter.
4. Subdivision plans for the single-family residential development shall be submitted within one year from the effective date of this permit and final subdivision approval shall be secured within one year from the date of receipt of tentative subdivision approval.
5. 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.
6. A 100-foot setback area from the certified shoreline shall be established in which the construction of structures shall be prohibited, unless a lesser setback is approved by the Planning Director. The 100-foot setback line shall be delineated on plans for plan approval and building permit(s).
7. The minimum 40-foot shoreline setback line shall be staked by a registered surveyor prior to any land alterations in the affected area. Written confirmation shall be submitted in conjunction with requested permit(s). 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.
8. Access to the project site shall comply with the requirements of the State Department of Transportation-Highways Division. Access improvements shall be completed prior to issuance of a certificate of occupancy for any portion of the hotel.
9. All roadways within the proposed development shall be constructed in accordance with the requirements of the Department of Public Works. Roadway connections to the adjacent properties shall be provided meeting with the

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approval of the Department of Public Works. The frontage road shall be constructed to tie in with adjacent properties within one year from the issuance of a certificate of occupancy for the hotel development, or at such time as required by the Departments of Public Works and Planning. 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.

10. A drainage system shall be installed meeting with the approval of the Department of Public Works.
11. All residential/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.
12. A data recovery plan shall be submitted for review and approval by the Planning Department in consultation with the Department of Land and Natural Resources. The data recovery shall be completed prior to issuance of a grading permit or land alterations of the site. Further, the approved archaeological mitigation plan for archaeological site preservation shall be implemented.
13. 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.
14. An emergency preparedness and response plan shall be submitted to the Planning Director and the Civil Defense Agency for review and approval prior to issuance of a certificate of occupancy for any portion of the hotel development.
15. An anchialine pond management plan shall be submitted to and approved by the Planning Director in consultation with the Department of Land and Natural Resources, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service

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prior to submitting plans for plan approval of any of the proposed uses or prior to conducting any land preparation activity in the affected area, whichever occurs first. The Pond Management Plan shall include, but not be limited to, an inventory, reporting and mitigation system of the biological pond species as well as avifauna (Hawaiian stilt, the Hawaiian duck and the Hawaiian owl) and care of the hala groves. The objectives of the management plan shall be to: A) maintain the environmental and physical integrity of the existing ponds and hala groves; B) protect and manage this resource to provide educational and interpretive opportunities to the public; C) provide landscaping to complement ponds with resort use; D) control and monitor construction activities so that impacts may be identified and mitigated to avoid any detrimental impacts to the pond and hala groves; and E) provide for a pond manager to implement the approved management plan and conduct scientific monitoring programs. The Pond Management Plan will detail the area of ponds and hala groves to be preserved, the dimensions of a 40-foot wide buffer zone surrounding the pond complex, the dimensions of other pond buffer zones, allowable activities within the pond areas, if any, and establish a pond management program. No boardwalks or accessways shall be permitted over existing anchialine ponds, unless otherwise approved by the Planning Director.

16. A comprehensive public access plan shall be submitted for review and approval by the Planning Department, in consultation with the Department of Land and Natural Resources, prior to submittal of plans for plan approval or subdivision approval, whichever comes first. The comprehensive public access plan shall include, but not be limited to, the delineation of a minimum of two mauka-makai public accesses; lateral shoreline access along the length of the property; location, time of construction and/or availability of public accesses and parking/drop-off areas; restrictions on use; signage and related improvements. Restroom/shower facilities shall be provided at the two mauka-makai public accesses. A minimum of one public shoreline parking stall for every ten hotel and residential units shall be provided concurrently with the construction of the units. The unit count shall include that portion of the resort development mauka of the Queen Kaahumanu Highway as required by Ordinance No. 88 158 and SMA Use Permit

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- No. 273. An approved easement shall be recorded with the State Bureau of Conveyances for the public accesses and parking areas.
17. A water quality and marine life monitoring and mitigation plan shall be submitted to and approved by the Planning Department prior to the issuance of a grading permit and/or prior to any land preparation activity being conducted on the property.
 18. 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.
 19. All utility lines shall be underground.
 20. A construction housing mitigation plan shall be submitted to the Planning Department for review and approval prior to receipt of Final Plan Approval for the hotel development. The plan shall include a regular reporting schedule to allow the Planning Department to monitor the construction housing impact.
 21. An employee housing assessment and mitigation plan shall be submitted for review and approval by the Planning Department in consultation with the Office of Housing and Community Development prior to Final Plan Approval. The employee housing assessment and mitigation plan shall address, but not be limited to, the economic and social profile of the employees; the profile and inventory of the housing stock; and projections of existing and future major industries' employee needs. The applicant shall provide employee housing units in compliance with the resort assessment established in Condition K of Ordinance No. 88 158 with the exception of in lieu cash payments and shall implement the recommended mitigation measures, as required, prior to issuance of a certificate of occupancy for any portion of the hotel development.
 22. A job training program for the operating phase of the hotel shall be developed and submitted to the Planning Department for review and approval prior to receipt of Final Plan

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Approval for the hotel development. The on-going training program shall continue and will provide for an upgrading of skills and opportunities.

23. Applicant shall make the best possible use of available cost effective energy savings technology in the design of the resort development. Energy conscious design and technology will be incorporated based on both life cycle cost analysis and the architecture of the resort.

As part of the required annual reporting to the Planning Department regarding the conditions of approval, a listing of proposed energy saving design features for the resort will be submitted.

24. Comply with all affected conditions imposed by the State Land Use Commission, Ordinance No. 87 49 (General Plan Amendment), Ordinance No. 88 158 (Change of Zone) and SMA Use Permit No. 273.
25. Comply with all other applicable laws, rules, regulations, and requirements, including those of the State Department of Health.
26. 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.
27. 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.,

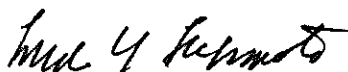
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a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

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.

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

Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

xc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
OSP, CZM Program w/background
DLNR
HELCO
PBR
Department of Transportation-Highways Division
OHCD
Department of Health
Civil Defense
U. S. Army Corps of Engineers
U. S. Fish & Wildlife Service
Mr. Jerry Rothstein
Research & Development