



# Planning Commission

Lorraine R. Inouye  
Mayor

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

## CERTIFIED MAIL

December 3, 1991

Sandra P. Schutte, Esq.  
Attorney At Law  
101 Aupuni Street, Suite 124  
Hilo, HI 96720

Dear Ms. Schutte:

✓ SMA Use Permit and Change of Zone Applications  
Applicant: Paniau Partners  
Tax Map Keys: 6-9-1:7 & Portion of 12;  
and 6-9-6:1, 2, 49, 50, 51 & 52

The Planning Commission at its duly held public hearing on November 22, 1991, reviewed and acted on the above applications for a Change of Zone and Special Management Area (SMA) Use Permit for the above described properties.

The Commission voted to recommend the approval of the Change of Zone application to the County Council, subject to the following conditions:

- A. The applicants, successors or assigns shall comply with all of the stated conditions of approval.
- B. As agreed to by the applicant, restrictive covenants in the deeds of all lots shall prohibit the construction of ohana dwelling units. A copy of the proposed covenant(s) shall be submitted to the Planning Department for review and approval prior to final subdivision approval. Written assurance for implementation of this condition, which has met with the approval of the Planning Department, shall be submitted to the Planning Department prior to final subdivision approval. A copy of a typically recorded covenant shall be filed with the Planning Department within one year from the date of final subdivision approval.
- C. Sewage treatment facilities shall meet with the approval of the Department of Health.

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Sandra P. Schutte, Esq.  
December 3, 1991  
Page 2

- D. A drainage system shall be installed meeting with the approval of the Department of Public Works.
- E. An annual progress report shall be submitted to the Planning Director prior to the anniversary date 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.
- F. Should the council adopt a Unified Impact Fees ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein may, at the developer's election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance.
- G. An initial extension of time for the performance of conditions within the ordinance 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 applicants, 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 change of zone; 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); and e) 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.

The Planning Commission also voted to approve your application, Special Management Area (SMA) Use Permit No. 326, to allow a 10-lot residential subdivision, construction of Puako Beach Drive extension

Sandra P. Schutte, Esq.  
December 3, 1991  
Page 3

and related improvements. The property is located at the southern end of Puako Beach Drive in Puako, South Kohala, Hawaii.

Approval of the Special Management Area (SMA) Use Permit is based on the following:

The purpose of Chapter 205-A, Hawaii Revised Statutes, and Rule 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 an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

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 Land Use Pattern Allocation Guide (LUPAG) map which designates this area for Resort development. Further, the Single Family Residential zoning designation allows for the proposed use.

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 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.

The property is located in close proximity to the shoreline. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Negative impacts on the local water resulting from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing

Sandra P. Schutte, Esq.  
December 3, 1991  
Page 4

regulations. Individual wastewater systems in accord with the State Department of Health's standards will be provided as required to avoid and minimize impacts to coastal ecosystems. Therefore, no significant adverse impact to coastal ecosystems is anticipated.

The proposed development is not expected to have adverse impact on public access. An existing public access is provided through the Mauna Lani Resort complex to the existing Holoholokai Beach Park located on the south end of the subject property. This area is provided with public parking, restrooms and access to the shoreline. From this area, access to the shoreline along the subject properties is available. A condition of approval is being included to ensure that the lateral public access is not inhibited as well as a form of access at the north end of the development.

Viewplanes will not be significantly affected by the proposed development. No building development shall be permitted within the forty-foot shoreline setback. Because of the relatively level topography of the area, makai views from this area will not be significantly affected. The mauka viewplane from the shoreline should also not be affected because of the existing topography.

An archaeological data recovery plan and mitigation program shall be required as a condition of approval for the proper management of the historical resources identified on the subject property. This management program shall be reviewed by the Planning Department, consultation with the Department of Land and Natural Resources. All recommendations of the management and preservation program shall be completed and approved by the DLNR, State Historic Preservation Division and Island of Hawaii Burial Council prior to the issuance of a grading permit for any construction activity on the subject property. Further, on-site construction monitoring by an archaeologist will be required due to the sensitivity of the sites.

Approval of the Special Management Area (SMA) Use Permit is subject to the following conditions:

1. The petitioner, successors or assigns shall comply with all stated conditions of approval.

Sandra P. Schutte, Esq.  
December 3, 1991  
Page 5

2. The effective date of this Permit for the residential project shall be the effective date of the accompanying change of zone. The effective date of the Permit for the roadway project shall be the date of adoption by the Planning Commission.
3. Subdivision plans for the roadway corridor shall be submitted within one year from the effective date of this Permit. Tentative subdivision approval of the roadway corridor and residential project shall be secured within one year from the date of submittal of preliminary subdivision plans for the roadway corridor. Final subdivision approval of the roadway corridor and residential project shall be secured within one year from the date of submitting final subdivision plans.
4. The creation of the separate roadway lot and common area may be permitted subject to the approval of the Planning Department in consultation with the Department of Water Supply.
5. A 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 final subdivision approval. The plan shall include, but not be limited to, a signage program at the north and south boundaries of the project site; provision for lateral pedestrian access on the project site unless adequate access can be demonstrated makai of the properties; provision for a mauka-makai public access at the north end of the project site from Puako Beach Drive; and an area for parking.
6. An archaeological data recovery plan and mitigation program shall be submitted for review and approval by the Planning Department, in consultation with the State Department of Land and Natural Resources, prior to receipt of final subdivision approval or prior to any land alterations, whichever occurs first. Approved mitigation measures, including on-site monitoring of construction activities by an archaeologist, shall be implemented prior to or in conjunction with any land alteration activity.

7. 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.
8. An anchialine pond management plan shall be submitted to and approved by the Planning Department in consultation with the Department of Land and Natural Resources, U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service prior to final subdivision approval of the residential project or prior to any land alterations, whichever occurs first. Upon securing approval of the pond management plan, the ponds and any buffer area shall be delineated on the subdivision plans. Appropriate mitigation measures shall be implemented prior to or in conjunction with any land alterations. The pond management plan findings and attendant responsibilities shall be set forth in the deed/covenants of each parcel.
9. A minimum 40-foot setback area shall be established from the makai property line on each future parcel in which the construction of structures shall be prohibited. The 40-foot setback area shall be delineated on subdivision plans and plans for plan approval or building permit. This condition shall be set forth in the deed/covenants of each parcel; provided, however, that this condition shall not prohibit the establishment of a greater shoreline setback area as determined by the Planning Director in accordance with applicable laws and rules at the time of any building permit.
10. An emergency preparedness and response plan shall be filed with the Planning Director and the Civil Defense Agency prior to final subdivision approval. The emergency preparedness and response plan shall be included in the deed/covenants of each future parcel.
11. All utility lines shall be underground.

Sandra P. Schutte, Esq.  
December 3, 1991  
Page 7

12. Sewage treatment facilities shall meet with the approval of the Department of Health.
13. Access to the subject property from Puako Beach Drive extension shall meet with the approval from the Department of Public Works.
14. Comply with all other applicable laws, rules, regulations and requirements.
15. An annual progress report shall be submitted to the Planning Director prior to the anniversary date 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.
16. An initial 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 petitioner, successors or assigns, and that are not the result of their fault or negligence; (b) the 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.

The Change of Zone recommendation and the Special Management Area (SMA) Use Permit approval do 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.

Sandra P. Schutte, Esq.  
December 3, 1991  
Page 8

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

Sincerely,



Mike Luce, Chairman  
Planning Commission

6908d  
jdk

xc: Paniau Partners  
Department of Public Works  
Department of Water Supply  
West Hawaii Office  
Department of Health  
Civil Defense Agency  
U.S. Army Corp of Engineers  
U.S. Fish & Wildlife Service  
DLNR  
Plan Approval Section