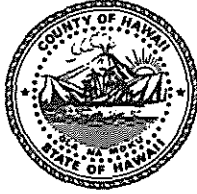


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL

OCT 28 1994

R. Ben Tsukazaki, Esq.
Menezes Tsukazaki Yeh & Moore
100 Pauahi Street, Suite 204
Hilo, HI 96720

Dear Mr. Tsukazaki:

Special Management Area Use Permit Application (SMA 94-6)

Applicant: Kaupulehu Land Company

Request: To allow the development of approximately
800 single, multiple family and resort residential
units and a commercial area

Tax Map Key: 7-2-03:Portions of 4 and 6

The Planning Commission at its duly held public hearing on October 20, 1994, voted to approve the above-referenced application. Special Management Area Use (SMA) Permit No. 348 is hereby issued to allow resort/residential uses and commercial uses at the Kaupulehu Resort, Kaupulehu, 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.

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. In conjunction with the rezoning ordinance and two SMA Use Permits approved for the Kaupulehu Resort development, a water quality/marine life monitoring and mitigation plan and an archialine pond management plan were required. These have been prepared and have received approval from the Planning

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Department. Thus, implementation of the plans by continued monitoring and reporting or by execution of an agreement with the County will protect coastal ecosystems and assist in gathering information for research purposes.

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, provided approved management and mitigation plans are implemented. Botanical and terrestrial fauna surveys, conducted by Char & Associates and Bruner in 1986, indicate that no endangered or threatened plant species will be affected by the proposed development. Similarly, since no significant archaeological sites have been identified on the project site, cultural and historical resources will not be adversely impacted.

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. Portions of the property are within the tsunami hazard zone. Development within this area shall comply with Chapter 27 of the Hawaii County Code relating to flood control. An emergency preparedness and response plan will be drafted for review and approval by the Planning Director and the Civil Defense Agency. As mentioned previously, a water quality and marine life monitoring and mitigation plan was mandated at the Change of Zone and SMA levels of review. 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 proposed project will not impact the two mauka-makai public accesses and complete lateral shoreline access which the applicant is already providing as part of Kaupulehu Resort's comprehensive development.

Viewplanes from Queen Kaahumanu Highway will be minimally impacted due to the low density scale of the proposed development and its two- and three-story height limits. While a

total of 1,408 residential units could be permitted based on the existing zoning, only 787 units are being proposed. This reduced density is desirable over the intensive residential use the underlying zoning permits.

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 lands 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 judgement, 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 Kaupulehu, 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 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 sets forth standards for the various types of resort destination areas.

The General Plan identifies Kaupulehu, of which the proposed project 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 permanent residents. Such facilities are considered to be an integral part of a resort area. The proposed improvements are consistent with the goal 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 project area under consideration is or will be provided with all essential utilities and services, including water.

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. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of the permit.
3. The plans for the initial development shall be submitted to the Planning Department for Plan Approval, Planned Unit Development (PUD) and/or Subdivision review within 3 years from the effective date of approval of the Special Management Area Major Use Permit. The plans for review shall consist of pre-construction drawings drawn to scale consisting of a grading plan, detailed landscaping plan, a site plan showing the location of proposed improvements, off-street parking, and any other information related to

the improvements. The submittal of plans for final Plan Approval, Planned Unit Development (PUD) and/or Subdivision Approval shall also include the recommendations of the DLNR, State Historic Preservation Division for buffers, fencing, etc. for pre-construction and post-construction for the proposed improvements.

4. Construction of the proposed improvements shall commence within two years of the effective date of Final Plan Approval or of Planned Unit Development (PUD) approval and be completed within 2 years from the date of issuance of the building permits.
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 may be required to be constructed in areas of likely pedestrian traffic as determined by the Planning Director in consultation with the Chief Engineer. All utility lines shall be installed underground.
6. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, 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.
7. All other applicable Federal, State and County Rules, Regulations and Requirements shall be complied with.
8. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall include the status of the development, the compliance with 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.
9. 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;

R. Ben Tsukazaki, Esq.
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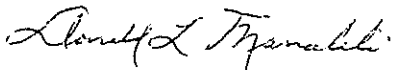
c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

10. 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.

Should you have any questions, please feel free to contact Rodney Nakano of the Planning Department at 961-8288.

Sincerely,



Donald L. Manalili, Chairman
Planning Commission

RKN:jdk
LKaupu01.PC

xc: Ms. Anne Mapes
Honorable Stephen K. Yamashiro, Mayor
Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of State Planning, CZM Program w/background
Department of Land and Natural Resources
Plan Approval Section