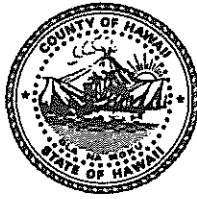


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
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CERTIFIED MAIL
P 364 320 023

January 4, 1996

Mr. Keith Unger
Alii Gardens Marketplace
P.O. Box 181
Honaunau, HI 96726

Dear Mr. Unger:

Special Management Area Use Permit (SMA) Application (SMA 95-5)
Applicant: Alii Gardens Marketplace
Request: Establish an Open-Air Market and Related Improvements
Tax Map Key: 7-5-20:70

The Planning Commission at its duly held public hearing on December 14, 1995, voted to approve the above-referenced application. Special Management Area Use (SMA) Permit No. 358 is hereby issued to allow the establishment of an open-air market place, parking area and related improvements. The property is located across the entrance to Alii Point Subdivision mauka of Alii Drive, between Alii Drive and the proposed Alii Highway, approximately 120 feet northwest of Kahakai Elementary School at Puapuaa 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS), and 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.

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 will consist of kiosks and umbrellas and other related facilities interspersed throughout landscaping with walkways. The proposed development is located mauka of Alii Drive, approximately 600 feet from the shoreline. Therefore, there would be no adverse impact to recreational and visual resources, access to and along the shoreline nor coastal ecosystems. The property was cleared and used for

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pasture in the past, and is presently overgrown. Current vegetation on the property is dominated by non-native plants. There are no known rare or endangered plant life or animal species on the property or in its immediate vicinity. The proposed development would not impact the immediate adjacent properties as the subject property is surrounded by vacant lands to the north, east and south. Single-family residences are located to the west on the makai side of Alii Drive.

The proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. According to the Department of Public Works, the applicant should install sewer lines to tie in with the Alii Drive Interceptor Sewer which is currently under construction. A condition of approval will be included that the applicant hook up to the County's sewer system when in operation. In the interim, wastewater generated from the proposed development should be treated and disposed of in accordance with the regulations of the State Department of Health. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects on the coastal resources or environment.

In December 1994, an inventory level archaeological survey with limited subsurface testing was conducted on the subject property. A total of 16 sites were identified during the inventory survey. Eight (8) of the sites are recommended to be subjected to a program of data recovery. Two sites known to contain burials have been recommended for preservation. A Data Recovery and Preservation Plan is presently being prepared by Cultural Surveys Hawaii for submittal to and review by the State Department of Land and Natural Resources Historic Sites Division. The establishment of buffer zones, interim protection measures and remaining archaeological data recovery still needs to be completed. Therefore, a condition of approval will be included stating that the applicant fully implement the approved historic preservation plan prior to securing Final Plan Approval of the proposed development. The implementation of this mitigation plan will satisfy the SMA objective to "Protect, preserve and where desirable restore significant historic and cultural resources."

The proposed development is consistent with the County 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 Urban Expansion. This designation allows for high and medium density uses which includes commercial activities such as those proposed. Mindful of the type of service the applicant will provide to the residents of West Hawaii, the proposed use will compliment the following goals, policies and standards of the Land Use and Commercial Elements of the General Plan:

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- Provide for commercial developments that maximize convenience to users.

- o Commercial facilities shall be developed in areas adequately served by necessary services, such as water, utilities, sewers and transportation systems.
- o Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.
- o The development of commercial facilities should be designed to fit into the locale with minimal intrusion while providing the desired services. Appropriate infrastructure and design concerns shall be incorporated into the review of such developments.

The proposed use would also conform to the following goals and policies of the Economic Element:

- o Provide residents with opportunities to improve their quality of life.
- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

Based on the above findings, it is determined that the proposed development will not have any 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 the Special Management Area.

Approval of this request is subject to the following conditions:

1. The applicant, its successor 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 applicant, its successors or assigns shall be responsible for complying with all conditions of the Use Permit which allowed the proposed development.
4. Final Plan Approval for the proposed improvements shall be secured from the Planning Department in accordance with Chapter 25-243 of the Zoning Code. Plans shall identify the proposed structures, vehicular traffic, paved driveway access and parking stalls associated with the proposed use. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. Landscaping along the project site's boundaries shall be provided to the extent that a continuous, unbroken, heavy planting screen, no less than 5 feet in height, is established prior to the issuance of a certificate of occupancy.

5. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit.
6. Access, roadway and any drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works and prior to the issuance of a certificate of occupancy.
7. Sewer lines shall be constructed, to hook up to the Alii Drive Interceptor Sewer, in a manner meeting with the approval of the Department of Public Works and prior to the issuance of a certificate of occupancy. In the interim, wastewater generated by the proposed development shall be disposed of in a manner meeting with the approval of the Department of Health or Department of Public Works, whichever is applicable.
8. A Data Recovery Plan and Preservation Plan shall be prepared for the review and approval of the State Department of Land and Natural Resources-Historic Preservation Division. Proposed mitigation treatment (preservation in place or disinternment/reinternment) for burial sites must be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. A copy of the approved Final Data Recovery Plan and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for plan approval review and prior to any approval for any land alteration permits.
9. 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.
10. A Solid Waste Management Plan for the development shall be prepared meeting with the approval of the Department of Public Works prior to issuance of a certificate of occupancy for any portion of the project. The Plan shall include, but not be limited to, the management of solid waste generated from the construction and operating phase(s) of the proposed development. Approved recommendations and mitigation measures shall be implemented at a time and in a manner meeting with the approval of the Department of Public Works. A copy of the approved Plan shall be submitted to the Planning Department for its files.
11. 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, and a detailed listing of public complaints or problems and their disposition. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action or remedial effort, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission that

the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked. 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.

12. The applicant, its successors or assigns shall be responsible for complying with the following conditions:
 - A. The marketplace will be open to the public no earlier than 8:00 a.m. and will close no later than 5:00 p.m. Vendors will be allowed to enter the property no earlier than 7:00 a.m. and all vendors will be required to leave the property no later than 6:30 p.m. Applicants agree that there will be no market operations, events, performances or activities held after sunset and before sunrise.
 - B. Applicants will ensure that all solid waste materials will be removed from the property on a daily basis and enforce rules prohibiting vendors from using trash facilities located on nearby properties.
 - C. Applicants will pave all areas required by the Planning Department. All other areas of vehicular parking and travel shall be surfaced with a dust-free material.
 - D. Applicant will limit Alii Drive frontage signage to two signs, each no larger than the maximum allowable size per County of Hawaii regulations. One sign will be located at each corner of the property which fronts on Alii Drive. Signs will be of permanent construction, will be constructed of wood or metal, will be of a character consistent with a high quality, Polynesian market and will conform with County sign ordinances. Applicant will not use, nor allow any vendor to use, banners, sandwich signs, signboards, flags, balloons, inflatable signs or features, temporary signs or the like.
 - E. Applicant will develop Polynesian-designed, thatched kiosks as sales areas. No umbrellas, tarps, awnings, tents, or other temporary shelters or display areas will be permitted except that up to 20 green or earth-tone colored umbrellas may be used in place of the kiosks during the first twelve months of operation.
 - F. Applicant will assign the kiosks or sales display areas nearest to Alii Drive to local artisans and crafts persons selling high quality, handmade products. Applicant will assign the kiosks or sales display areas furthest away from Alii Drive to sellers of imported merchandise and/or previously owned merchandise. Applicant shall strive to attract vendors selling a high quality product and shall insure that all vendors comply with project rules and regulations. At no time will more than one half of the vendors on site be selling primarily imported or previously owned merchandise.

- G. Applicant will not use or permit any vendor, employee or other user of the marketplace to use, play or perform amplified music, including radios, cassette or CD players or car stereo systems.
- H. Applicant will institute measures to reduce noise, fugitive dust and traffic problems during construction and operation of facilities on the property.
- I. Applicant will provide adequate parking on the property and will prohibit vendors and patrons from parking on Alii Drive. Applicant will recommend and support designation of both mauka and makai portions of Alii Drive as no-parking zones for 500' on both north and south sides of the entrance(s) to the marketplace. Applicant will cooperate in encouraging patrons and vendors to comply with the no-parking restriction including hiring off-duty police officers, if necessary, to control traffic and parking along Alii Drive.
- J. Applicant will have a designated manager on the property and on duty during all hours of operation of the marketplace. The name and phone number of the designated manager will be provided to all property owners within 300 feet of the property.
- K. Applicant will develop a landscape buffer between the parking and sales areas of the marketplace and Alii Drive, which will include a hedge, shade trees and lawn. Applicant will make reasonable efforts to screen sales areas from nearby residences.
- L. Applicant will request that the State and County permit access from the property to the proposed Alii Highway. If access is permitted, applicant will encourage patrons and require vendors to use Alii Highway for access to the marketplace. Applicant will design and construct its internal traffic circulation pattern in a way that will discourage use of the access road as a connector between Alii Drive and Alii Highway.
- M. Applicant will prohibit the possession, consumption, use, or sale of all alcoholic beverages and illegal drugs on the property.
- N. Applicant will design and develop drainage and flood control improvements which will prevent surface runoff from the property to enter Alii Drive or any of the private properties makai of Alii Drive in the vicinity of the property.
- O. Applicant will utilize environmentally appropriate best management practices in maintaining landscaping and performing pest control on the property.
- P. Applicant will comply with all State and County requirements relating to preservation of historical and cultural resources including, but not limited to, appropriate treatment of burial sites on the property.
- Q. Applicant will, on an ongoing basis, monitor traffic flow on Alii Drive and assess any impacts the marketplace has on traffic. In the event marketplace-related traffic results in disruption of traffic flow on Alii Drive, applicant will

take appropriate measures to mitigate the traffic impact. These mitigation measures will include, but are not limited to, hiring off-duty police officers and/or security guards to direct traffic, adjusting hours of operation or otherwise changing operations, and performance of traffic improvements.

- R. Applicant will take appropriate measures to protect the safety and security of property owners near the marketplace. Applicant will prohibit overnight camping on the property and will prohibit vendors from sleeping in vehicles or camping in the surrounding area. Applicant will prohibit pets or animals on the property.
 - S. Applicant will design and develop a wastewater treatment system to be approved by the State of Hawaii Department of Health and the County of Hawaii. Upon commencement of market operations on the property, no portable toilets will be permitted at any time.
13. 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.
 - 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).

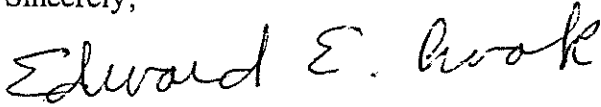
Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

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.

Mr. Keith Unger
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Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Edward E. Crook, Chairman
Planning Commission

AK:syw

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xc: Reid and Associates
Honorable Stephen K. Yamashiro, Mayor
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 Health
Department of Land and Natural Resources