

Stephan 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 095 324 407

DEC 14 1998

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Management Area Use Permit Application (SMA 98-7)
Applicant: Tusso Development & Management, Inc.
Request: Allow for the Development of a Commercial/Condominium
Complex and Related Improvements
Tax Map Key: 7-5-18; 11, 16, 26, 78 and 80

The Planning Commission at its duly held public hearing on December 3, 1998, voted to deny standing to Mary Richrod on her request for a contested case procedure due to her non-submittal of the \$100 filing fee, as required by Rule 4 of the Planning Commission relating to contested case. The Commission then voted to approve the above-referenced application. Special Management Area Use (SMA) Permit No. 388 is hereby issued to allow the development of a commercial/condominium complex and related improvements. The property is located on the makai side of Ali'i Drive bounded by Ali'i Drive and Kahakai Road, south of Royal Kona Resort and north of Kona Reef Condominium, Puua 3rd, 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 of the commercial/condominium building 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 a 6,500 square foot, 4-story commercial retail office building and forty eight (48) 2-bedroom condominium units with 82-parking stalls and perimeter landscaping. The proposed development is located on the makai side of Alii Drive approximately 200 feet from the shoreline. The development has a total combined area of 76,739 square feet and is irregular in shape. Parcel numbers 11, 78, and 80 were previously used for a mini golf facility. The topography of the site varies considerably. The elevation at Alii Drive is approximately thirty four (34) feet, and mid-way through the site, the slope abruptly drops to the eighteen (18) to twenty-four foot elevation. From that point the site gradually slopes towards Kahakai Road to about thirteen (13) foot elevation. The Flood Insurance Rate Map (FIRM) indicates that the property is located in Zone "X", areas outside of the 500-year flood plain. Portions of the development have been used as a mini golf facility in the past, and was graded and bulldozed. Current vegetation on the property is dominated by non-native plants. Due to the improved nature of the subject property and the surrounding areas, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the project site, nor has the project site been identified as a significant botanical or biological habitat. Therefore, there would be no adverse impact to recreational and visual resources, access to and along the shoreline nor coastal ecosystems. The proposed development would not impact the immediate adjacent properties as the subject property is surrounded by resort, commercial establishments, condominiums, single family residences and vacant lands.

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 applicant, the proposed project will be hooked up to the County of Hawaii's Alii Drive sewer system. The Department of Health requires that if there is any type of process wastewater discharge from the project into State waters the applicant may be required to apply for an individual NPDES permit. The applicant has stated that they will comply with NPDES requirements. 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. Likewise, the potential of finding rare or endangered animal life is not anticipated.

The applicant's Environmental Report indicates that no significant historic sites are present on the property because of past uses and landscaping. However, during the construction of the Alii Drive sewer project a lava tube containing significant cultural material was encountered a short distance mauka of the subject parcel. A condition of approval has been included that if a lava tube is encountered during the proposed action, all work shall cease in the immediate area and the lava tube is to be protected from further damage. The Department of Land and Natural Resources, State Historic Preservation Division office should be contacted immediately and allowed to conduct a field investigation of the tube to determine site significance. If the lava tube is determined to be significant, the establishment of buffer zones, interim protection

measures and remaining archaeological data recovery may need to be completed. This 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 as Resort. This type of designation refers and includes uses such as business services, hotels, restaurants, retail establishments, theaters and visitor information centers. 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, Commercial Elements, and Multiple Family Residential Elements of the General Plan:

Land Use

- 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.

Commercial

- Provide for commercial developments that maximize convenience to users.
- Commercial facilities shall be developed in areas adequately served by necessary services, such as water, utilities, sewers and transportation systems.
- Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.
- 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.

Multiple Family Residential

- To provide for multiple residential developments that maximize convenience for its occupants.
- To provide for suitable living environments which accommodate the physical, social and economic needs of the island residents.

The proposed request would also complement the following Housing Element goals and policies by creating a mix of residential housing opportunities, maintaining a housing supply that allows a variety of choice and by providing housing units geared toward the middle income bracket.

Housing

- Attain safe, sanitary, and livable housing for the residents of the County of Hawaii.
- Attain a diversity of socio-economic housing mix throughout the different parts of the County.
- Maintain a housing supply which allows a variety of choice.
- Develop better places to live in Hawaii County by creating viable communities with decent housing and suitable living environments for our people.
- Improve and maintain the quality and affordability of the existing housing stock.
- Seek sufficient production of new affordable rental and fee-simple housing in the County in a variety of sizes to satisfactorily accommodate the needs and desires of families and individuals.
- Ensure that housing is available to all persons regardless of age, sex, marital status, ethnic background and income.

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

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- 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. 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 Special Management Area Use Permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within 90 days of the effective date of this SMA Permit.

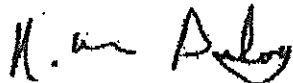
3. Construction of the proposed development shall be completed within 5 years from the effective date of this permit. Prior to commencing construction, Final Plan Approval for the proposed retail/commercial office building shall be secured from the Planning Department. Plans shall identify proposed structures, paved driveway access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule No. 17 (Landscaping Rule) associated with the proposed use.
4. Prior to securing Final Plan Approval, the developer shall prepare a Solid Waste Management Plan for the development meeting with the approval of the Department of Public Works.
5. A sewer line shall be installed to tie in with the Alii Drive Interceptor Sewer meeting with the approval of the Department of Public Works.
6. Alii Drive and Kahakai Road shall be improved along the property's frontage with curb, gutter, and sidewalk construction, pavement widening, drainage improvements, and relocation of utilities along the Alii Drive and Kahakai Road frontages meeting with the approval of the Department of Public Works.
7. Should any remains of unidentified historic sites such as rock walls, terraces, platforms, or human burials, lava tube or cave systems be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
8. 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 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 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).

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. Sidney Fuke
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Should you have any questions, please feel free to contact Alice Kawaha of the Planning Department at 961-8288 or Royden Yamasato of the Planning Department West Hawaii Office at 327-3510.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

LTusoD01.PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office ✓
Office of Planning, CZM Program (w/Background)
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Corporation Counsel
Mr. Norman Hayashi, SMA Section
Ms. Mary Richrod



County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

October 6, 2008

Pacific Monarch Resorts, Inc.
c/o Mr. William C. Foulk
75-5656 Kuakini Highway, Suite 301
Kailua-Kona, HI 96740

Dear Mr. Foulk:

Special Management Area Use Permit (SMA 388)
Request: Time Extension to Condition 3 – Construction Timetable
Applicant: Pacific Monarch Resorts, Inc.
Tax Map Key: 7-5-18:11

The Planning Commission at its duly held public hearing on September 19, 2008, voted to approve the above-referenced request for an amendment to Condition No. 3 (time to complete construction) of Special Management Area Use Permit No. 388, which allowed the development of a commercial/condominium complex and related improvements on 76,739 square feet of land. The property is located on the makai side of Alii Drive bounded by Alii Drive and Kahakai Road, south of Royal Kona Resort and north of Kona Reef Condominium, Puaa 3rd, North Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a 5-year time extension to Condition No. 3 of Special Management Area Use Permit No. 388 (time to complete construction) to extend the deadline within which to complete construction for the project from December 13, 2008 to December 13, 2013. Condition No. 3 of SMA Use Permit No. 388 states:

“Construction of the proposed development shall be completed within 5 years from the effective date of this permit. Prior to commencing construction, Final Plan Approval for the proposed retail/commercial office building shall be secured from the Planning Department. Plans shall identify proposed structures, paved driveway access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule 17 (Landscaping Rule) associated with the proposed use.”

Hawai'i County is an Equal Opportunity Provider and Employer

The Planning Commission approved SMA Use Permit No. 388, effective December 14, 1998, to allow for the development of a commercial/condominium complex and related improvements. The subject property is zoned Resort-Hotel District (V-.75). The applicant proposes to develop 7,007 square feet of retail space and forty eight (48) 2-bedroom condominium units with 115 parking stalls and perimeter landscaping. Final Plan Approval for the project was issued on June 6, 2007, and the foundation construction began in September 2007.

On January 31, 2002, the Planning Director granted an administrative time extension until December 13, 2008 to comply with Condition No. 3 (time to complete construction).

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 are not the result of their fault or negligence. According to the applicant, there were numerous reasons for the delay, including construction delays due to a 30-foot wide lava tube that was found on the site; delays due to design changes; processing delays due to the consolidation of the six lots in the Land Court; and new requirements by the Department of Public Works for drainage. Therefore, the non-performance was a result of conditions that could not have been foreseen by the applicant and are not the result of the applicant's fault or negligence.

Granting of the time extension would not be contrary to the General Plan or Zoning Code. The General Plan designation for this area is Resort Node and Open. The majority of the parcel is designated as Resort Node, which allows for a mix of visitor-related uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), single-family and multiple-family residential units, golf course and other typical resort recreational facilities, resort commercial complexes and other support services. Only Major Resort Areas are identified as Resort Nodes on the LUPAG Map. The Open designation, which is located on the makai portion of the parcel, allows for parks and other recreational area, historic sites, and open shoreline areas. The property is zoned Resort-Hotel District (V-.75). The granting of the time extension would not be contrary to the General Plan or the Zoning Code.

Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone. The original reasons for the approval of Special Management Area Use Permit No. 388, and its amendments, are still applicable today and the request is not contrary to these reasons. Based on the discussion above, the request for a 5-year time extension to Condition No. 3 (time to complete construction) of SMA Use Permit No. 388 would not be contrary to the General Plan or Zoning Code nor the original reasons for granting of the permit. The request is approved as follows (material to be deleted is bracketed and struck-through; new material is underscored):

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
- ~~[2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within 90 days of the effective date of this SMA permit.]~~
- [3] 2. Construction of the proposed development shall be completed within 5 years from the effective date of this [permit] amendment. ~~[Prior to commencing construction, Final Plan Approval for the proposed retail/commercial office building shall be secured from the Planning Department. Plans shall identify proposed structures, paved access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule 17 (Landscaping Rule) associated with the proposed use.]~~
- ~~[4. Prior to securing Final Plan Approval, the developer shall prepare a Solid Waste Management Plan for the development meeting with the approval of the Department of Public Works.]~~
- [5] 3. A sewer line shall be installed to tie in with the Alii Drive Interceptor Sewer meeting with the approval of the Department of ~~[Public Works]~~ Environmental Management.
- [6] 4. Alii Drive and Kahakai Road shall be improved along the property's frontage with curb, gutter, and sidewalk construction, pavement widening, drainage improvements, and relocation of utilities along the Alii Drive and Kahakai Road frontages meeting with the approval of the Department of Public Works. The street widening and roadside improvements required by this condition shall be installed along an alignment meeting with the approval of the Department of Public Works. Any portion of the subject parcel upon which the improvements to meet this condition are installed, shall be subdivided and dedicated to the County, upon satisfactory completion and prior to the issuance of a Certificate of Occupancy, at no cost to the County.
- [7] 5. Should any remains of unidentified historic sites such as rock walls, terraces, platforms, or human burials, lava tube or cave systems be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

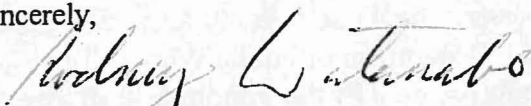
- [8.]6. ~~An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:~~
- A. ~~The non performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, its 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). If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.~~

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

This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

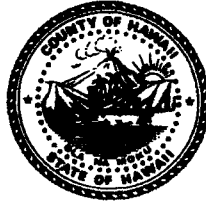
Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,


Rodney Watanabe, Chairman
Planning Commission

Lpacificmonarchsma388PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona ✓
Department of Land and Natural Resources/HPD
DOT-Highways, Honolulu
Ms. Alice Kawaha
Zoning Inspector-Kona



County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JUN - 9 2014

Dr. William C. Foulk
Parthenon Group, Inc., A.I.A.
75-5656 Kuakini Highway, Suite 301
Kailua-Kona, HI 96740

Dear Dr. Foulk:

SMA No. 388 (Docket No. 98-000007)
Applicant: Diamond Resorts International, Inc. (formerly Pacific Monarch Resorts, Inc.)
Request: 5-Year Time Extension to Comply With Condition No. 2 (Time to Complete Construction)
Tax Map Key: 7-5-018:011

The Leeward Planning Commission, at its duly held public hearing on May 15, 2014, voted to approve the above-referenced request for an amendment to Special Management Area (SMA) Use Permit No. 388 to allow a 5-year time extension to comply with Condition No. 2 (time to complete construction). SMA Use Permit No. 388 had allowed the development of a commercial/condominium complex and related improvements on 76,739 square feet of land. The property is located on the makai side of Ali'i Drive bounded by Ali'i Drive and Kahakai Road, south of Royal Kona Resort and north of Kona Reef Condominium, Pua'a 3rd, North Kona, Hawai'i.

Approval of this amendment is based on the following:

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of the proposed development shall be completed within 5 years from the effective date of this second amendment.

JUN - 9 2014

3. A sewer line shall be installed to tie in with the Ali'i Drive Interceptor Sewer meeting with the approval of the Department of Environmental Management.
4. Ali'i Drive and Kahakai Road shall be improved along the property's frontage with curb, gutter, and sidewalk construction, pavement widening, drainage improvements, and relocation of utilities along the Ali'i Drive and Kahakai Road frontages meeting with the approval of the Department of Public Works. The street widening and roadside improvements required by this condition shall be installed along an alignment meeting with the approval of the Department of Public Works. Any portion of the subject parcel upon which the improvements to meet this condition are installed, shall be subdivided and dedicated to the County, upon satisfactory completion and prior to the issuance of a Certificate of Occupancy, at no cost to the County.
5. Should any remains of unidentified historic sites such as rock walls, terraces, platforms, or human burials, lava tube or cave systems be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
6. If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.

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

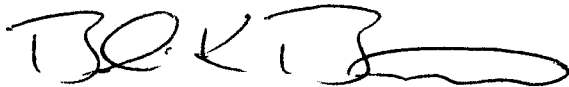
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Approval of this permit is based on the reasons given in the attached recommendation report.

Dr. William C. Foulk
Parthenon Group, Inc., A.I.A
Page 3

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288, ext 8142.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. K. B.', with a long horizontal flourish extending to the right.

Brandi K. Beaudet., Chairman
Leeward Planning Commission

LDiamondresortssma388lpc

Enclosure: PC Recommendation Report

cc: Diamond Resorts International, Inc.
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State DLNR-HPD
Mr. Gilbert Bailado
Planning Department - Kona

COUNTY OF HAWAII PLANNING COMMISSION RECOMMENDATION

DIAMOND RESORTS INTERNATIONAL, INC.

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 388

The applicant is requesting a 5-year time extension to Condition No. 2 of Special Management Area Use Permit No. 388 (time to complete construction) to extend the deadline within which to complete construction for the proposed project. Condition No. 2 of SMA Use Permit No. 388 states:

“Construction of the proposed development shall be completed within 5 years from the effective date of this amendment.”

The Planning Commission approved SMA Use Permit No. 388, effective December 14, 1998, to allow for the development of a commercial/condominium complex and related improvements. The subject property is zoned Resort-Hotel District (V-.75). The applicant propose to develop 7,007 square feet of retail space and forty eight (48) 2-bedroom condominium units with 115 parking stalls and perimeter landscaping. Final Plan Approval for the project was issued on June 6, 2007. On September 19, 2008, the Planning Commission granted a five-year time extension amendment to comply with Condition No. 3 (time to complete construction).

The reasons for the delay since the approval of the previous time extension amendment request include the local and national economies entering into a catastrophic cycle of decline and financial difficulties. As a result, the previous owner of the property went into receivership as the bank held it in portfolio until a resolution of the debt could be arranged.

Between 2009-2010, the existing building permits received final inspections for the electrical rough-in, foundation and retaining walls. Additionally, there have been improvements costing several million dollars put in place, including a 12-inch waterline in Waiolu Road dedicated to the County and an 8-inch waterline installed on the property. The water commitments and facilities charges have all been paid. Lastly, all the company assets were purchased by Diamond Resorts in 2013.

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 are not the result of their fault or negligence. According to the applicant, there were numerous reasons for the delay, including the local and national economies entering into a catastrophic cycle of decline and financial difficulties with the owners of the property. There have been major improvements constructed in excess of several million dollars, including the underground parking facilities, foundation, rough-in for the electrical and major waterline improvements. Therefore, the non-performance was a result of conditions that could not have been foreseen by the applicant and are not the result of the applicant's fault or negligence.

Granting of the time extension would not be contrary to the General Plan or Zoning Code. The General Plan designation for this area is Resort Node, which allows for a mix of visitor-related uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), single-family and multiple-family residential units, golf course and other

typical resort recreational facilities, resort commercial complexes and other support services. Only Major Resort Areas are identified as Resort Nodes on the LUPAG Map. The property is zoned Resort-Hotel District (V-.75). The granting of the time extension would not be contrary to the General Plan or the Zoning Code.

Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone. The original reasons for the approval of Special Management Area Use Permit No. 388, and its amendments, are still applicable today and the request is not contrary to these reasons. Based on the discussion above, the request for a 5-year time extension to Condition No. 2 (time to complete construction) of SMA Use Permit No. 388 is approved.

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director



Nancy Carr Smith, Chair
Perry Kealoha, Vice-Chair
Barbara DeFranco
Max Newberg
Mark Van Pernis
Michael Vitousek
Faith "Faye" Yates

County of Hawai'i

LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JAN 21 2021

Mr. Michael L. Iosua
Ms. Kimberley W. Yoshimoto
Imanaka Asato
745 Fort Street Mall, 17th Floor
Honolulu, HI 96813

Dear Mr. Iosua and Ms. Yoshimoto:

SUBJECT: Special Management Area Use Permit No. 388 (Docket No. 98-000007)
Applicant: DPM Acquisition LLC dba Diamond Resorts International
(formerly Pacific Monarch Resorts, Inc.)
Request: Five-Year Time Extension to Comply with Condition No. 2
(Time to Complete Construction)
Tax Map Key: (3) 7-5-018:011

The Leeward Planning Commission, at its duly held public hearing on December 17, 2020, voted to approve the above-referenced request to amend Special Management Area Use Permit (SMA 388) to amend Condition No. 2, which allowed the development of a commercial/condominium complex and related improvements on 76,739 square feet of land. The project site is located on the makai side of Ali'i Drive bounded by Ali'i Drive and Kahakai Road, south of Royal Kona Resort and north of Kona Reef Condominium, Pua'a 3rd, North Kona, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of the proposed development shall be completed within 5 years from the effective date of this third amendment, in accordance with the following schedule: a) Application for Plan Approval shall be submitted to the Planning Department no later than January 30, 2022; b) Application for Building Permit shall be submitted no later than January 30, 2023; and c) Construction shall commence no later than January 30, 2024. Failure to comply with this schedule

shall result in the automatic nullity of this permit, except that if the project is substantially constructed but not completed, a time extension to complete construction may be granted by the Leeward Planning Commission.

3. The applicant shall provide a site maintenance and safety program to the Planning Department for review and approval within 60 days of the effective date of this third amendment. In the development of this program, the applicant shall make reasonable efforts to consult with neighboring residents by providing a copy of the draft program by mail or email to the Kona Reef Owners' Association and individuals that testified verbally or in writing at the October 15, 2020 Planning Commission hearing and/or the December 17, 2020 Planning Commission hearing for feedback in preparation of the program submitted to the Planning Department for approval. Said program shall include a discussion of the consultation process, an analysis of the need for an interim pedestrian walkway fronting the property's road frontages; implementation timetable; and contact information of the responsible person or company. This program shall be in force until physical construction commences.
4. A sewer line shall be installed to tie in with the Ali'i Drive Interceptor Sewer meeting with the approval of the Department of Environmental Management.
5. Ali'i Drive and Kahakai Road shall be improved along the property's frontage with curb, gutter, and sidewalk construction, pavement widening, drainage improvements, and relocation of utilities along the Ali'i Drive and Kahakai Road frontages meeting with the approval of the Department of Public Works. The street widening and roadside improvements required by this condition shall be installed along an alignment meeting with the approval of the Department of Public Works. Any portion of the subject parcel upon which the improvements to meet this condition are installed, shall be subdivided and dedicated to the County, upon satisfactory completion and prior to the issuance of a Certificate of Occupancy, at no cost to the County.
6. Should any remains of unidentified historic sites such as rock walls, terraces, platforms, or human burials, lava tube or cave systems be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
7. If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.

Mr. Michael L. Iosua
Ms. Kimberley W. Yoshimoto
Imanaka Asato
Page 3

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


[Note: Ramseyer version available upon request.]

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.

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Jessica Andrews of the Planning Department at 961-8155.

Sincerely,

DocuSigned by:
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Nancy Carr Smith, Chair
Leeward Planning Commission

LDPMAcquisitionAmendSMA388lpc

Enclosure: PC Findings Report

cc w/enclosures: Department of Public Works
Department of Water Supply
County Real Property Tax Division - Hilo
✓ Department of Environmental Management
GIS Section
Plan Approval Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

**DPM ACQUISITION LLC, dba DIAMOND RESORTS INTERNATIONAL
(FORMERLY PACIFIC MONARCH RESORTS, INC.)
AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 388**

Based on the following findings, an amendment to Condition No. 2 (time to complete construction) of Special Management Area Use Permit No. 388 is hereby approved, to allow the development of a commercial/condominium complex and related improvements on 76,739 square feet of land. The property is located on the makai side of Ali'i Drive bounded by Ali'i Drive and Kahakai Road, south of Royal Kona Resort and north of Kona Reef Condominium, Pua'a 3rd, North Kona, Hawai'i, TMK: 7-5-018:011.

The applicant is requesting a five-year time extension to comply with Condition No. 2 (time to complete construction) of Special Management Area Use Permit No. 388, which was approved on December 14, 1998, to allow the development of a commercial/condominium complex, with 7,007 square feet of retail space, forty-eight (48) 2-bedroom condominium units and related improvements on approximately 76,739 square feet of land. Final Plan Approval for the project was issued on June 6, 2007. On September 19, 2008, the Planning Commission granted a five-year extension of the time to complete construction. On May 15, 2014, another amendment was approved to allow a five-year time extension or until May 15, 2019, to comply with Condition No. 2. The most recent Plan Approval, dated May 22, 2017, approved four levels of timeshare resort units above an existing concrete parking garage. The proposed development will consist of forty-six (46) 3-bedroom units with 119 parking stalls and perimeter landscaping. Previously, the total combined area of 76,739 square feet consisted of parcel numbers 11, 16, 26, 78, and 80, and portions of property (parcel numbers 11, 78 and 80) were used for a mini golf facility. Since that time, the parcels have been consolidated into one parcel totaling 76,739 square feet. Condition No. 2 states:

"Construction of the proposed development shall be completed within 5 years from the effective date of this amendment."

The applicant cites the reasons for the delay since the approval of the previous time extension amendment request, which include fiscal challenges with the previously proposed design of the project that make it impossible to meet the current deadline to complete construction. After assuming ownership of the property in 2013, Diamond Resorts had the opportunity to conduct a feasibility study to determine the current actual cost for the original design of the project. The study revealed that the actual cost exceeded the budget allotted for the project by a range of 20 to 30 million dollars. The applicant has stated that the design is currently being modified to make it economically feasible for build out and completion. The redesign effort has caused significant delays that have led to this time extension request.

Several building permits have been issued and final inspections completed for construction of retaining walls, structural columns for the foundation and an elevated concrete slab. An electrical permit was issued and final inspection completed for the installation of empty electrical conduit. Construction is currently on hold pending the approval of the amendment request to SMA Use Permit Condition No. 2 for a time extension to complete construction.

Additionally, the applicant states that the design is currently in the process of being modified. Final plan approval stipulates that there shall be no modifications to plans without prior written approval of such changes by the Planning Department. The current plan approval expired on May 21, 2019.

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 are not the result of their fault or negligence. According to the applicant, there were numerous reasons for the delay, which include fiscal challenges with the previously proposed design of the project that make it impossible to meet the current deadline to complete construction. After assuming ownership of the property in 2013, Diamond Resorts had the opportunity to conduct a feasibility study to determine the current actual cost for the original design of the project. The study revealed that the actual cost exceeded the budget allotted for the project by a range of 20 to 30 million dollars. The applicant has stated that the design is currently being modified to make it economically feasible for build out and completion. The redesign effort has caused significant delays that have led to this time extension request. Therefore, the non-performance was a result of conditions that could not have been foreseen by the applicant and are not the result of the applicant's fault or negligence.

Granting of the time extension would not be contrary to the General Plan, Kona Community Development Plan or Zoning Code. The General Plan designation for this area is Resort Node, which allows for a mix of visitor-related uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), single-family and multiple-family residential units, golf course and other typical resort recreational facilities, resort commercial complexes and other support services. Only Major Resort Areas are identified as Resort Nodes on the LUPAG Map. The property is zoned Resort-Hotel District (V-.75). The Kona Community Development Plan (CDP), adopted in 2008, includes the subject property in the Urban Area. The granting of the time extension would not be contrary to the objectives and policies of General Plan, the Kona CDP or the Zoning Code.

Granting of the time extension would not be contrary to the original reasons for the granting of the Special Management Area Use Permit. The original reasons for the approval of Special Management Area Use Permit No. 388, and its amendments, are still applicable today and the request is not contrary to these reasons. Based on the discussion above, the request for a 5-year time extension to Condition No. 2 (time to complete construction) of SMA Use Permit No. 388 would not be contrary to the General Plan or Zoning Code nor the original reasons for granting of the permit.

This approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

At their December 17, 2020 meeting, the Leeward Planning Commission voted to change Condition No. 2, from what the director recommended, in order to establish intermediate construction deadlines. The objective was to require that the applicant meets each successive deadline and shows substantive progress towards completing the project. The Commission also added Condition No. 3 in order to establish a site security and maintenance program to address public testimony. Additionally, the condition was added to require that the applicant contacts and addresses the concerns of surrounding property owners and public testifiers.

Based on the preceding findings, the proposed development will not have substantial adverse impacts on the environment, 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.