

BEFORE THE PLANNING COMMISSION
COUNTY OF HAWAII

I HEREBY CERTIFY THAT THIS IS A FULL,
TRUE AND CORRECT COPY OF THE ORIGINAL
ON FILE IN THE OFFICE OF THE PLANNING
DEPARTMENT OF THE COUNTY OF HAWAII,
HILO, HAWAII. **DEC 30 1999**

Hilo, Hawaii;

In the Matter of the Contested Case Hearing) SMA No. 98-6
of)
Special Management Area Use Permit)
Application (SMA 98-6))
Applicant: Kaupulehu Developments)
Request: To allow for a resort-)
residential community and related)
facilities.)
Tax Map Key: (3) 7-2-003:Portion of 1.)

Hearing Date: December 28, 1999

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER
ON REMANDED ISSUES**

An appeal to the Third Circuit Court was made by Ka Pa'akai O Ka 'Aina from the County of Hawaii Planning Commission's approval of Special Management Area ("SMA") Use Permit No. 389 to Kaupulehu Developments ("KD"), entitled *Ka Pa'akai O Ka 'Aina v. Planning Commission of the County of Hawaii, et al.*, Civil No. 99-007K, Third Circuit Court. Pursuant to a ruling issued by the Court in this appeal, the matter is remanded to the Planning Commission for its consideration of certain issues which are addressed herein.

An appeal to the Third Circuit Court was likewise made by Honi's Beach Association and others from the Planning Commission's approval of an SMA Use Permit to Sobay, Inc. ("Sobay"), entitled *Honi's Beach Association, et al. v. County of Hawaii Planning Commission, et al.*, Civil No. 99-008K, Third Circuit. Pursuant to a Judgment entered in that appeal, the matter was likewise remanded to the Planning Commission for its consideration of the same issues (and others) as remanded in Civil No. 99-007K. As such, and pursuant to stipulation of the parties, the remand proceedings in these two cases have been consolidated for the sole and specific purpose of addressing these issues.

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In addition, pursuant to §91-9(d), Hawaii Revised Statutes, the parties in the above-described cases stipulated to the following remand procedure:

1. The remand proceedings would involve a re-opening of the contested case hearing for each of the two cases at the point after which the parties had originally received and responded to a proposed decision from the hearing officers.

2. As provided in Rule 4-33, Planning Commission Rules of Practice and Procedure ("PC Rules"), the Planning Commission would allow the parties the opportunity to present evidence and give legal argument on the remand issues prior to decision-making by the Planning Commission.

3. The parties waive the procedural right to receive and file exceptions to a proposed decision as provided in Rule 4-23, PC Rules.

4. The parties waive the requirement under Rule 4-25, PC Rules, for the Planning Commission to incorporate into its decision a ruling on each finding of fact proposed by a party.

This matter came before the Planning Commission for contested case hearing on December 28, 1999. R. Ben Tsukazaki appeared as counsel for KD; Michael J. Matsukawa appeared as counsel for Intervenor Ka Pa'akai O Ka 'Aina; and Virginia Goldstein appeared on behalf of and as the Planning Director of the County of Hawaii Planning Department.

The Planning Commission, having reviewed and heard all of the evidence introduced and presented in this contested case, including without limitation all evidence presented prior to the hearing held on December 28, 1999, hereby makes the following Findings of Fact and Conclusions of Law, and Decision and Order On Remanded Issues, pursuant to Rule 4-25, County of Hawaii Planning Commission Rules of Practice and Procedure ("Planning Commission Rules"). Based on the within Findings of Fact and Conclusions of Law, and

Decision and Order, the Planning Commission hereby ratifies and re-issues SMA Use Permit No. 389, as amended hereby.

FINDINGS OF FACT

1. In its ruling, the Third Circuit Court in *Ka Pa'akai O Ka 'Aina v. Planning Commission, et al.*, Civil No. 99-007K remanded to the Planning Commission certain questions concerning HRS §205A-2(8). With respect to these questions the Planning Commission finds as follows:

What agency or agencies are responsible for maintaining the public advisory body referred to in HRS §205A-2(c)(8)(A)?

The agency responsible for maintaining the public advisory body is the State Office of Planning. HRS §205A-3(6) directs the Office of Planning to “[f]acilitate public participation in the coastal zone management program.”

What is the public advisory body which now exists?

The public advisory body which now exists is the Marine and Coastal Zone Management Advisory Group (MACZMAG), which is described in HRS §205A-3.5.

What is the public advisory body’s role in the Coastal Zone Management Program?

MACZMAG advises the lead agency, Office of Planning, on issues relating to the administration of the Coastal Zone Management Program. HRS §205A-2(c)(8)(A) provides that the public advisory body is to “identify coastal management problems and to provide policy advice and assistance to the coastal zone management program..” Under HRS §205A-3.5(f), MACZMAG is directed to “advise the Office of Planning regarding marine and coastal management planning, coordination and facilitation of functions of the program” and to “work toward the establishment and implementation of an integrated and comprehensive management system for marine and coastal zone resources, consistent with the objectives and policies established in [Chapter 205A].”

What is the public advisory body's role in individual special management area use permit applications?

In addition to members who are appointed as community representatives, the directors of the departments of planning in the counties of Hawaii, Kauai and Maui and the director of the department of land utilization in the City & County of Honolulu are designated among the 20 members of MACZMAG under HRS §205A-3.5(b)(1). At the regular meetings of MACZMAG they present summaries of major SMA Use permit applications which are under consideration or recently approved in their respective counties, and initiatives undertaken by their respective counties relative to the Coastal Zone Management Program. They also may request technical assistance concerning these matters. MACZMAG members and members of the general public in attendance at MACZMAG meetings may request information concerning particular applications or initiatives and offer technical assistance where appropriate.

What is the scope and purpose of the public advisory body's function in identifying coastal problems?

Each MACZMAG member may recommend to the Chair that a particular issue related to coastal zone or marine management be discussed at a future meeting. Members also have the option of forming subcommittees to consider coastal issues in more depth and report back to the membership as a whole.

What is the scope and purpose of the public advisory body's function in providing policy advice and assistance to the Coastal Zone Management Program?

Under HRS §205A-3.5(f), MACZMAG is directed to advise the Office of Planning regarding marine and coastal zone management planning, coordination, and facilitation of functions of the Coastal Zone Management Program, and to work toward the establishment and implementation of an integrated and comprehensive management system for marine and coastal zone resources consistent with the objectives and policies of Ch. 205A. Additionally, the non-government members of MACZMAG prepare an annual report to the Legislature with recommendations for improving the Coastal Zone Management Program.

What is the relationship, if any, between the public advisory board and the functions described in §205A-2(c)(8)(B) and (C) regarding dissemination of information, public education, and specific site mediation, among other things?

MACZMAG members assist the Office of Planning in disseminating information and promoting public education about coastal zone management. For coastal-related issues of particular interest to MACZMAG, the members form subcommittees to address them. A summary of recommendations concerning the Coastal Zone Management Program is annually submitted to the Legislature.

In regard to Kaupulehu Developments' SMA permit, what was the input or involvement by the Office of Planning or other public advisory board in the contested case hearing?

The County of Hawaii Planning Department, as a member of MACZMAG, reported to the full membership concerning Kaupulehu Development's permit application at the September 18, 1998 and November 20, 1998 meetings of MACZMAG. Neither the Office of Planning nor MACZMAG submitted comments for the record in the contested case hearing, although there existed an opportunity to make such comments.

What evidence was presented to address coastal problems and issues as identified by the Office of Planning or other public advisory body in the contested case hearing?

The Office of Planning and MACZMAG did not identify any specific coastal problems or issues concerning Kaupulehu Developments' permit application. At the contested case hearing, KD submitted substantial evidence regarding coastal hazards and various resources identified in the coastal area and presented a comprehensive plan for the management and protection of these resources.

2. In its ruling, the Third Circuit Court in *Ka Pa'akai O Ka 'Aina v. Planning Commission, et al.*, Civil No. 99-007K also remanded to the Planning Commission certain questions concerning Condition 21 of SMA Use Permit No. 389, and the Cultural Advisory Committee referred to therein. With respect to these questions the Planning Commission finds

as follows:

Is Condition 21 essential to the SMA permit?

Condition 21 is not essential to the SMA permit.

Did the Planning Commission consider the Integrated Resources Management Plan a final document or an unfinished, draft document?

The Integrated Resources Management Plan is “final” to the extent it is a complete document and adequately identifies coastal resources and addresses the management of those resources to support the Planning Commission’s finding that the proposed development is consistent with the objectives, policies and special management area guidelines of Chapter 205A.

Did the Commission conclude that the evidentiary record is adequate, without Condition 21, to allow the Commission to find that the decision-making criteria in §205A-26 are satisfied?

Yes.

If Condition 21 is essential to the SMA Permit, what is the intended purpose and function of the cultural advisory committee?

- a. Is it an enforcement agency?
- b. Is it allowed or required to make recommendations to appropriate agencies which must review further plans to be developed by Kaupulehu Developments?

Not applicable.

3. The parties have entered into a stipulation to delete Condition 21 in its entirety as a condition of SMA Use Permit No. 389 and also to amend Condition 22 of said permit to delete reference to the “Cultural Advisory Committee.”

4. Condition 14 of SMA Use Permit No. 389 provides in part that the Integrated Resources Management Plan (“IRMP”) be made “a part of this permit.” Based upon Kaupulehu

Developments' request for deletion, representations on the record and legal argument related thereto, the IRMP does not to be made a part of the permit. Condition 14 further provides that the implementation recommendations and management guidelines of the IRMP shall govern the use of the Coastal Planning Areas and other resources.

CONCLUSIONS OF LAW

1. The objectives and policies of Chapter 205A relating to public participation apply to the Office of Planning and MACZMAG and do not specifically apply to the review and approval of individual SMA Use Permit applications.

2. Condition 21 is not essential to the SMA Use Permit and its deletion as a condition does not affect the validity of the permit.

3. It is not necessary that the Integrated Resources Management Plan be made "a part of" the permit in order to ensure that the implementation recommendations and management guidelines of the Integrated Resources Management Plan be followed.

4. Based upon the record of SMA Use Permit No. 389, the proposed development is consistent with the objectives, policies and guidelines of Chapter 205A, including the public participation objectives and policies set forth in HRS §205A-2.

DECISION AND ORDER

Upon review of the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED as follows:

The Planning Commission hereby ratifies and re-issues to Kaupulehu Developments Special Management Area ("SMA") Use Permit No. 389, as amended hereby, to allow the development of a resort-residential community with commercial facilities, residents' club, golf courses and clubhouse, Hawaiian interpretive center, public access and safety

amenities and related ancillary facilities, on property located on the makai side of Queen Kaahumanu Highway adjacent and north of Kona Village Resort and Hualalai Resort developments at Kaupulehu, North Kona, County and State of Hawaii, identified as Tax Map Key:(3)7-2-003:Portion of 1, and hereby incorporates by reference the conditions of SMA Use Permit No. 389, except as follows:

1. Condition 14 of SMA Use Permit No. 389 is hereby amended by deleting the first sentence thereof which states "The Integrated Resources Management Plan dated June 1998 or any amendments approved thereafter by affected agencies shall be made a part of this permit," and by amending the second sentence by adding the following underlined words so as to read "The implementation recommendations and management guidelines of the Integrated Resources Management Plan dated June 1998, as may be amended pursuant to agency requirements, shall govern the use of the Coastal Planning Area and other resources."

2. Condition 21 of SMA Use Permit No. 389 is hereby deleted therefrom in its entirety.

3. Condition 22 of SMA Use Permit No. 389 is hereby amended by deleting the last sentence thereof which states: "The [Hawaiian place] names shall be reviewed for appropriateness by the Cultural Advisory Committee."

The Findings Of Fact and Conclusions Of Law, and Decision and Order of the Planning Commission as contained in that certain approval letter dated December 11, 1998 and

the record of SMA Use Permit No. 389 are hereby incorporated by reference and made a part hereof.

DATED: Hilo, Hawaii, DEC 30, 1999.

A handwritten signature in dark ink, appearing to read "Leonard S. Tanaka", written over a horizontal line.

LEONARD S. TANAKA

Chairman, County of Hawaii Planning Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties by U.S. Mail, first-class postage prepaid, on this date:

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Attorney for KA PA'AKAI O KA'AINA

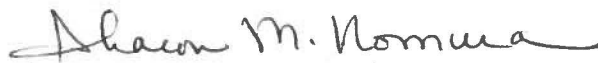
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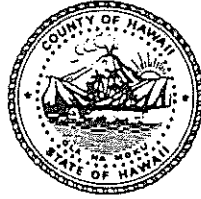
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DATED: Hilo, Hawaii, December 30, 1999.



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
Z 095 324 409

DEC 11 1998

Ms. Anne Mapes
Belt Collins Hawaii
680 Ala Moana Boulevard, First Floor
Honolulu, HI 96813

Dear Ms. Mapes:

Special Management Area Use Permit Application (SMA 98-6)
Request: Allow for a Resort Residential Community with Commercial Resident's
Club, Golf Course and Club House, Hawaiian Interpretive Center, Public Access
and Safety Amenities and Related Ancillary Facilities
Applicant: Kaupulehu Developments
Tax Map Key: 7-2-3:Portion of 1

The Planning Commission at its duly held public hearing on December 4, 1998, voted to approve the above-referenced application and adopt the Report of the Contested Case Hearing Officers; Findings of Fact and Conclusions of Law; Decision and Order. Special Management Area Use (SMA) Permit No. 389 is hereby issued to allow a resort residential community with commercial, residents' club, golf courses and clubhouse, Hawaiian Interpretive Center, public access and safety amenities, and related ancillary facilities. The property is located on the makai side of Queen Ka'ahumanu Highway adjacent and north of Kona Village Resort and Hualalai Resort developments at Kaupulehu, North Kona, Hawaii.

Approval of this request is based on the following:

FINDINGS OF FACT

1. The contested case hearing procedure was commenced upon the Petition For Standing In Contested Case Hearing which was filed by the Coalition on October 7, 1998. The Coalition is comprised of two organizations, Ka Lahui Hawaii and Protect Kohanaiki Ohana, which for the purpose of this proceeding were considered as a one-party intervenor. The Coalition's petition stated that the Coalition possessed "access and gathering rights" and a "beneficial interest to trails, public lands, and cultural resources." It also stated that the Coalition is a "...person or persons descended from Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practiced those rights which were customarily and traditionally exercised for subsistence, cultural, or religious purposes." In support of the latter statement, the Coalition referred generally to the "genealogical and historical evidence currently on file in the proceedings held before the State Land Use Commission.

Description of the Project Site and Surrounding Area

2. The Project site is located within the County's Special Management Area (SMA) and the State Land Use Urban District and on an approximately 1,081-acre portion of a larger 2,200-acre parcel identified as Tax Map Key:(3)7-2-003:001, which is leased by KD from Kamehameha Schools Bishop Estate ("KSBE"). This parcel is situated approximately 8 miles from the Kona International Airport within the ahupua'a of Kaupulehu, makai of Queen Kaahumanu Highway, immediately adjacent and to the north of the Kona Village Resort and Hualalai at Historic Kaupulehu ("Hualalai Resort").

3. The Project area is essentially an open expanse of a'a and pahoehoe lava flows. Existing improvements within the Project area include the roadway which provides vehicular access to the Kona Village Resort, an old airstrip which is used in conjunction with the Kona Village Resort operations, and water tank facilities at the 120-foot elevation which serve the Kona Village Resort.

4. Other primary uses of the Project area are recreational (e.g., hiking, camping, fishing, etc.) and cultural, such as food gathering (e.g., fish, opihi, limu, salt, etc.).

5. The Project area is generally flat and rises gently from sea level to an elevation of approximately 220 feet above sea level at the Queen Kaahumanu Highway with an overall average slope of about 4 percent. The distance between the Project area's shoreline and the Queen Kaahumanu Highway ranges between approximately 1.7 to 2.0 miles.

6. There is an expanse of vegetation and sandy soils along the northern shoreline of the Project area.

7. The a'a lava flow is a branch of the 1800-1801 Kaupulehu lava flow which extends through the center of the Project area and rises 10 to 20 feet above the older pahoehoe lava flows on either side. The a'a flow covers the western half of the Project area's shoreline and creates a relatively steep and rocky coast. There is no direct vehicular access to this portion of the Project area's shoreline.

8. The eastern half of the Project area's shoreline is a tidal pool shelf consisting of a broad expanse of pahoehoe strewn with a'a clinkers and coral rubble and covered in some areas with sand. There is a rough, four-wheel drive access upon the pahoehoe flow which begins on State (Puuwaawaa) land at the Queen Kaahumanu Highway and ends at the area just mauka of the shoreline in the eastern portion of the Project area.

Chronology

9. On June 17, 1996, a Petition for Land Use District Boundary Amendment was approved by the State Land Use Commission, reclassifying from the State Land Use Conservation district to the State Land Use Urban district approximately 1,009.086 acres of land within the Project area.

10. On or about June 23, 1998, KD submitted an application for a SMA Use Permit to allow for a resort-residential community with commercial facilities, a residents' club, up to two golf courses and clubhouse, a Hawaiian interpretive center, public access and safety amenities, and related infrastructural and ancillary facilities (the "Project"). In conjunction with

the application, a Final Environmental Impact Statement dated September 1994 and an Integrated Resources Management Plan dated June 17, 1998 were submitted as supportive documents.

Project Description

11. The Project area consists of approximately 1,081 acres of land within the County of Hawaii's Special Management Area situated on the makai side of the Queen Kaahumanu Highway.

12. KD is proposing to develop up to 1,030 resort-residential units within approximately 439 acres of the Project area. The development would consist of single-family, duplex, and multi-family developments. Approximately fifty oceanfront lots are planned. Other residential lots and units will have golf course frontage.

13. A championship golf course will serve as an entryway facility to the resort expansion community. The golf clubhouse, on a 12-acre area, will constitute a secondary restaurant and service complex for the Project area. Up to 36 holes of golf on approximately 415 acres is proposed.

14. An 11-acre neighborhood commercial center with up to 45,000 square feet of leasable space will offer products and services oriented toward the residential community and/or the general public.

15. A 3-acre area is set aside for club facilities which will serve as a water-oriented recreational amenity for the Project's residential community, members and guests, and/or the general public.

16. A 235-acre area which is referred to as the "Coastal Planning Area" will be established in order to allow access to the shoreline and to limit land uses in order to protect and properly manage the important natural, historic, and cultural resources contained therein. The Hawaiian interpretive center is proposed to be located within this area. The Coastal Planning Area is comprised of 197.936 acres within the state's urban district and 37.064 acres of land within the conservation district.

17. Public shoreline access and related facilities, which will include pedestrian shoreline access, parking, restrooms, showers and picnic areas within the Coastal Planning Area will be developed.

18. A maintenance area will accommodate ancillary services for the resort-residential community, including wastewater treatment facilities, landscape nursery facilities, service vehicle storage area and other utility facilities.

19. Infrastructure will be developed privately and in conjunction with Hualalai Resort where practicable, including the main roadway access from the Queen Kaahumanu Highway.

20. Full buildout of the Project is projected over 20 years. The Project's construction, exclusive of residential unit construction, is anticipated to cost over \$100 million (1994 dollars).

Integrated Resources Management Plan

21. A plan for the management of the Project area's resources entitled "Kaupulehu Integrated Resources Management Plan ("IRMP") was prepared by Belt Collins Hawaii with the assistance of a cultural resource specialist, Mr. Kepa Maly.

22. Mr. Maly was able to contact knowledgeable Kupuna and members of the kamaaina families of Kaupulehu and conduct oral history interviews to document their experiences of living on the land or visiting the Kaupulehu area. The primary focus of the interviews was to elicit traditional information (i.e. knowledge handed down in families from generation to generation) and to document traditional values and practices which are still retained in the lives of Hawaiian families associated with the Project area. In addition to the subsequent interviews which Mr. Maly conducted, he performed an additional archival review of relevant materials which supplemented archival information he had already gathered for other projects over a period of several years, but which was relevant to Kaupulehu.

23. The IRMP contains an inventory of the significant natural, historic and cultural resources within the Project area and recommendations for the preservation and management of the resources. It also addresses the preservation and management of resources outside of the Project area, such as the traditional ko'a opelu offshore of the Project area.

24. The highest concentration of such significant resources is located within the Coastal Planning Area.

25. The IRMP summarizes the values and concerns expressed by the kamaaina and kupuna of Kaupulehu and establishes them as a series of management guidelines. Significant resources identified in the IRMP will be treated and utilized in a manner that is consistent with the wishes of the kamaaina and kupuna through implementation of the IRMP.

Traditional and Customary Native Hawaiian Rights

26. Salt gathering is a traditional and customary practice which has occurred and is still occurring in the area known as Kalaemano. Native Hawaiian rights of access to the salt gathering area and of gathering of salt there have long been exercised by families who are kamaaina to the ahupua'a of Kaupulehu or who have a long-standing relationship with that ahupua'a.

27. The salt gathering area, although substantially different from that which existed in the early 1900s, is still a resource which is proposed for preservation under the IRMP. The salt gathering area is within the Coastal Planning Area which will ensure the preservation and proper management of the salt gathering area and access to that area, thus avoiding any significant adverse effect upon the rights of gathering and access.

28. Fishing and gathering of other food sources, such as opihi and limu, are a long-standing practice. Although these activities occur in large part makai of the certified shoreline and technically not within the Project area, access to these areas and resources will be preserved under the IRMP. Native Hawaiian rights of access to and gathering of these resources, as exercised by families who are kamaaina to or who have a long-standing relationship with Kaupulehu, will be respected, protected, and unimpaired under the IRMP and conditions of approval.

29. The coastal trail which traverses the entire shore frontage of the Project area along or in the vicinity of the certified shoreline, as well as public access on that trail, will be preserved under the IRMP.

30. Although there are traditional practices which are related to the ko'a opelu offshore which KD seeks to protect and restore through a proposed fisheries management area in concert with other ahupua'a lessees and interested parties, the offshore fisheries are beyond KD's jurisdiction as a lessee and are not within the project area.

31. The Coalition put forward no evidence showing which members, if any, of the groups which comprise the Coalition are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

32. The Coalition put forward no evidence of any traditional or customary Hawaiian practice or native Hawaiian rights other than those already described in these findings, nor any evidence showing that any of the members of the groups which comprise the Coalition have engaged in any traditional or customary native Hawaiian practice other than those already described in these findings.

33. The Coalition put forward no evidence connecting its claimed rights to a firmly rooted traditional or customary native Hawaiian practice other than those already described in these findings.

Objectives and Policies of Chapter 205A, HRS

34. The Project is consistent with the Coastal Zone Management ("CZM") program's objectives, policies and guidelines as contained in Chapter 205A-2, HRS, and the guidelines set forth in Rule 9-7, Planning Commission Rules, relating to the Special Management Area.

35. The CZM recreational resources objectives and policies are focused on government responsibilities to provide coordination and funding for coastal recreational opportunities and to provide accessible and diverse recreational opportunities in the coastal zone management area. KD's SMA application proposes to establish the Coastal Planning Area in which land uses would be limited in order to protect and properly manage the important cultural and environmental resources contained therein. KD's SMA application is consistent with the following CZM objective:

Recreational Resources Objective: Provide coastal recreational opportunities accessible to the public. The preservation and restoration of the coastal trail and the provision of a public-oriented recreation area by KD is consistent with this objective.

36. The CZM historic resources objectives and policies provide for the protection of significant archaeological and historic resources through their preservation or through information retention. An archaeological inventory survey of the Project area was conducted and the significant historic sites identified. A total of 193 sites, consisting of 660 discrete features, were recorded during the survey. Forty-five of these sites are located outside of the Project area. Aside from the historic coastal trail, none of the sites identified within the Project area are located on the Kaupulehu flow of 1800. Fifty-six of the sites are recommended

for no further work. Of the remaining 137 sites, 69 sites are assessed as significant solely for information content and recommended for further data collection. The remaining 68 sites have been recommended for some form of preservation. Forty-four of these sites are recommended for further data collection followed by preservation with interpretive development. Two trail sites which are major trails and 2 other sites are recommended for preservation with interpretive development. Of the 64 sites recommended for preservation, 38 are wholly within the approximately 37-acre preservation area. Nineteen sites are situated outside the preservation area but within the Project area. The remaining 7 sites recommended for preservation are located outside of the Project area. KD's SMA application is consistent with the following CZM objective:

Historic Resources Objective: Protect, preserve, and where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture. All significant archaeological resources identified on the property are proposed for preservation. A Hawaiian interpretive center will enhance the proper respect and stewardship of these resources by providing information on the value of the resources and the programs which are focused on protecting them.

37. The CZM scenic and open space resources objectives and policies provide for the protection of important coastal scenic and open space resources. KD's SMA application is consistent with the following CZM objective:

Scenic and Open Space Resources Objective: Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources. The existing quality of the coastal scenic and open space resources of the area will be preserved by the project. The development of a low-density, golf course oriented community will not detract from the open space character of the region. The Coastal Planning Area ensures that 235 acres within the Project area will be preserved for open space.

38. The coastal ecosystems objectives and policies call for the protection of valuable coastal ecosystems from disruption and to minimize adverse effects. KD's SMA application is consistent with the following CZM objective:

Coastal Ecosystems Objective: Protect valuable coastal ecosystems from disruption and minimize adverse impacts on coastal ecosystems. As discussed in the Project's Final Environmental Impact Statement ("EIS"), the proposed Project seeks to minimize any potential adverse impacts to coastal ecosystems. The potential adverse impact upon marine biota resulting from increased public access will be mitigated through the implementation of the IRMP which had been submitted in conjunction with the SMA permit process.

39. The economic uses objectives and policies are intended to ensure that coastal dependent developments are appropriately planned and developed. KD's SMA application is consistent with the following CZM objective:

Economic Uses Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations. Development of

the Project will assist the State in its implementation of the resort destination node strategy identified in the West Hawaii Regional Plan.

40. The coastal hazards objectives and policies are intended to minimize impacts to life and property along the shoreline. KD's SMA application is consistent with the following CZM objective:

Coastal Hazards Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence. The proposed Project has been designed to reduce potential hazards associated with coastal hazards.

41. The objectives and policies relating to managing development apply to government agencies mandated with implementing the CZM program and do not apply to individual projects. The Project is not inconsistent with the managing development objectives and policies of the CZM program. KD's SMA application is consistent with the following CZM objective:

Managing Development Objective: Improve the development review process, communication and public participation in the management of coastal resources and hazards. Preparation of the EIS for the proposed Project has provided the public with the opportunity to participate in the review of development proposals adjacent to coastal resources.

42. The objectives and policies relating to public participation are available through the Planning Commission's public hearing where public participation occurs in the form of oral or written testimony and within the Planning Commission's Rule No. 4 for Contested Case Hearing procedures.

43. The objectives and policies relating to beach protection apply to government agencies mandated with implementing the CZM program and do not apply to individual projects.

44. The objectives and policies relating to marine resources apply to government agencies mandated with implementing the CZM program and do not apply to individual projects.

Visual Resources

45. A visual analysis of the project site and its relation to the surrounding area was conducted by the applicant. The view analysis indicates that the project area will not obstruct views of the ocean from the Queen Kaahumanu Highway. This is based upon the uses and design standards including the following concepts: 1) maximum building heights in the commercial areas will be the same as in the multi-family residential areas, maximum height of 45 feet; 2) golf course uses as permitted uses; 3) landscape hedges will not be absolutely required between commercial and residential zone areas; 4) the building envelope as determined by these standards as proposed by the applicant. It is also based upon the distance from Queen Kaahumanu Highway and the shoreline (approximately 1.7 to 2.0 miles) and the higher elevation at the Queen Kaahumanu Highway which will allow viewplanes directly to the ocean over the proposed structures within the Project. Therefore, no mitigative measures are needed to maintain an ocean view from the highway.

Recreational, Scenic, and Cultural Resources

46. Recreational, food, and other cultural resources are located along the shoreline of the Property and the coastal trail which traverses the makai portion of the Property. These resources are located in areas which are within the state conservation district and the Coastal Planning Area and which will be preserved in open space.

47. Due to the flat topography of the Property, the proposed Project will be visible to motorists who use the Queen Kaahumanu Highway. However, there would be no loss of ocean views from the highway. Development setbacks and open-space corridors will help to preserve mauka viewplanes from the Kona Village Resort.

48. Except for certain archaeological sites which are located inland and mauka of Kona Village Resort, physical cultural resources are found in the coastal portion of the Property.

49. Based upon the evidentiary record and the testimony of Kepa Maly, a native Hawaiian cultural resources specialist who was qualified as an expert witness, the 1800-01 lava flow is not a "waoakua" or "dominion of the gods" as contended by the Intervenor. Such a characterization is not supported by any agency determination or any documentary account of traditional native Hawaiian cultural resources in the Project area.

50. As noted in KD's EIS and IRMP, Kalaemano, the area to the north of the 1800-01 lava flow, is historically known to be a significant salt-gathering area. Salt is still gathered there although, by kupuna accounts, the extensive area of the salt beds or pans has been covered by sand due to tidal waves during the middle of this century. This Kalaemano area is located within the Coastal Planning Area.

51. "Kalaemano" is also known as a point of land which is associated with a mano (shark). This point of land is located just north of Kaupulehu in the ahupua'a of Puuwaawaa which is owned by the State.

52. Wahi pana are the storied, remarkable places, the legendary places of significance in native Hawaiian culture.

53. Based upon historical records and interviews with kupuna, a specific area within the broader Kalaemano area is considered a sacred place. Some were instructed that this area was kapu because it was the home of a mano (shark) which was a deity which could take human form. Also, a stone outcropping near the certified shoreline, identified as Kolomu'o, which marked one of the opelu fishing grounds, is a wahi pana. Aside from these two areas, there are no specific wahi pana which are definitely known to be within the Project area, based on historical documentary research and interviews with kamaaina and kupuna.

54. The proposed Project will reasonably preserve and perpetuate cultural resources such as the wahi pana, archaeological sites, burials, the coastal trail, and the areas of fishing, opihi and limu gathering, salt gathering, and general recreation in the Coastal Planning Area and other areas within and adjacent to the Project Area.

55. KSBE has formulated a plan to manage and protect cultural resources within the entire ahupua'a of Kaupulehu. KD's IRMP is consistent with and furthers the

objectives of the ahupua'a plan. KSBE's ahupua'a plan includes designated geographic zones that define the natural, cultural, and historic resources of Kaupulehu from the mountain to the sea. The ahupua'a plan will involve native Hawaiians, particularly those who are kamaaina to the subject Property or descendants thereof, to relink the traditions and practices that are rooted in that Property. KSBE has formed a non-profit entity in perpetuity to oversee the formulation and implementation of the Kaupulehu ahupua'a plan and the implementation of KD's IRMP.

56. KSBE's ahupua'a plan does not identify any significant cultural resources in the Project area beyond those which have been identified in KD's EIS and IRMP.

Coastal/Aquatic, Botanical, Biological Resources

57. The proposed project does not involve alteration of the shoreline or off-shore areas. Given the prevailing climatic and physical characteristics of the off-shore environment, no adverse impacts are expected to result from the proposed project.

58. Based upon a botanical survey of the Project areas by Char and Associates, an endangered species, the ohai plant (*sesbania tomentosa*), was located in the southern portion of the Project area. The single ohai plant will be preserved and buffered from surrounding development based upon consultation with the U.S. Fish and Wildlife Service and will not be adversely affected by the Project.

59. Based upon a bird and mammal survey of the Project area by Phillip Bruner, no particularly special or unique bird or mammal habitats nor endemic or endangered birds and mammals were observed. The Project is not expected to negatively impact fauna within the Project area.

Environmental Quality

Noise

60. Existing ambient noise levels in the Project area will increase as a result of the proposed Project which will urbanize presently vacant lands. Temporary noise impacts are unavoidable during the construction phase. Construction and future noise impacts can be mitigated by KD through the use of quiet equipment, construction curfew periods, landscaped buffers and berms, and disclosures to future occupants of the proposed project.

Air Quality

61. The principal source of short-term air quality impact will be construction activity, which will increase automotive pollutant concentrations along Queen Kaahumanu Highway as well as in the vicinity of the Project itself. There is a potential for fugitive dust due to the dry climate and fine soils; applicable dust control measures, such as frequent watering, phased grading, landscaping, and other measures which may be required by law will be employed by KD during the construction period to mitigate such potential impacts.

Water Quality

62. The absence of significant runoff most of the year and the dynamic mixing of turbulent shoreline water by wave action preclude any adverse effect of chemical use within

the Project area upon coastal waters if adequate care is taken in irrigation and in fertilizer and pesticide practices. Similarly, groundwater quality will not be adversely affected based upon chemical application and irrigation practices, which are recommended in the Final EIS.

Adequacy of Public Services and Facilities

Water Service

63. The proposed Project will require potable water for consumption and non-potable water for irrigation. The groundwater resources within the Kaupulehu ahupua'a are adequate to meet the demand of the proposed Project.

64. A total of five wells are presently situated within the Kaupulehu ahupua'a. Two of them are non-potable wells and are capable of producing brackish water which is of acceptable quality for irrigation use. Two potable wells have also been drilled at the 1,400 elevation within the Kaupulehu ahupua'a. The fifth well is under construction. Additional potable and non-potable wells will be required for the Project.

Wastewater Disposal

65. The Property is not presently serviced by a wastewater collection and treatment system. A privately funded system will serve the proposed Project. Effluent from the proposed secondary level treatment facility will be utilized to supplement non-potable irrigation water for the proposed Project's 36-hole golf course.

Drainage

66. Due to the Property's relatively flat topography and the highly porous character of the lava, no defined drainageways exist on the Property. As the proposed Project is developed, the addition of topsoil and the development of impermeable surfaces will significantly alter the surface drainage flow from the Property. Surface water runoff will increase and there will be a greater potential for surface water to impact coastal waters. Petitioner will design all Project components to retain surface drainage on-site.

Solid Waste Disposal

67. The Property is not presently serviced by a solid waste collection and disposal system. Solid waste collected throughout the West Hawaii area is disposed of at the County's West Hawaii Sanitary Landfill at Puuanahulu.

68. The projected solid waste production by the proposed Project's population and facilities, assuming full build-out and occupancy, will be approximately 5.7 tons per day, or 2,067 tons per year. Minimal green waste will be generated during the construction phase of the proposed Project. During the operation phase, the mulching of yard trimmings and golf course green waste will help reduce the volume of solid waste that is sent to the County's landfill.

County General Plan and Zoning

69. The Hawaii County General Plan ("the General Plan") was adopted by Ordinance No. 89-142 and provides the long range master plan to assure the coordinated

development of the County. The Land Use Pattern Allocation Guide ("LUPAG") Map component of the General Plan represents the document's goals, policies, standards and courses of action to guide the coordinated growth and development of the County. It reflects a graphic depiction of the spatial relationship among various land uses and the expressed policy statements of the document itself. The LUPAG Map, in essence, establishes the basic land use pattern for areas within the County.

70. The General Plan LUPAG Map designates the Project area as Urban Expansion. This designation allows for a mix of high density, medium density, low density, industrial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. Within areas designated for development as resorts, portions of the resort area may be included in the Urban Expansion area. High Density allows uses relating to commercial, multiple residential and related services (general and office commercial; multiple residential - up to 87 units per acre). Medium Density allows uses relating to village and neighborhood commercial and residential and related functions (3-story commercial; residential - up to 35 units per acre). Low Density allows single-family residential in character, ancillary community and public uses, and convenience type commercial uses. Resort Area includes uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), and supporting services. The LUPAG Map also designates the entire Project's Queen Kaahumanu Highway frontage and along the shoreline as Open Area.

71. The zoning for the Project area is pending with the County Council and would establish "Project District" zoning. This zoning district, as proposed by KD, would allow the uses proposed in KD's SMA application.

Ecological and Environmental Effects

72. As described in KD's EIS and its SMA application and as uncontroverted on the record, the Project will not cause any significant or substantial adverse environmental or ecological effects and that where such effects may potentially exist, measures will be taken to mitigate them to the extent reasonably practicable.

73. Any conclusion of law hereafter determined to be a finding of fact is hereby found as a fact.

CONCLUSIONS OF LAW

Any finding of fact hereafter determined to be a conclusion of law is hereby made a conclusion of law.

SMA Use Permit Criteria

1. An SMA Use Permit is required for the development of the Project.
2. The Planning Commission may approve an SMA Use Permit for the development of the Project upon making the findings required under Rule 9-11(C)(1)-(3), Planning Commission Rules.
3. Under Rule 9-11(C)(1), Planning Commission Rules, the Planning Commission must find that the Project will not have any significant adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest.
4. Under Rule 9-11(C)(2), Planning Commission Rules, the Planning Commission must find that the Project is consistent with the objectives and policies as provided in Chapter 205A, HRS, and the Special Management Area guidelines contained in Rule 9-7, Planning Commission Rules.
5. Under Rule 9-11(C)(3), Planning Commission Rules, the Planning Commission must find that the Project is consistent with the General Plan, Zoning Code, and other applicable ordinances.
6. The Hearing Officers conclude that the Project will not have a significant adverse environmental or ecological effect. Further, any potential adverse environmental or ecological effect of the Project will be minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interests.
7. The Hearing Officers conclude that the Project is consistent with the objectives, policies and guidelines of Chapter 205A, HRS, and the Special Management Area guidelines set forth in Rule 9-7, Planning Commission Rules.
8. The Hearing Officers conclude that the Project is consistent with the General Plan, the Zoning Code, and the zoning ordinances specifically applicable to the Project site.
9. The Hearing Officers conclude that approval of KD's application would be consistent with the Planning Commission's obligation under the Hawaii Constitution to protect, to the extent feasible, customary and traditional rights exercised by native Hawaiians for subsistence, cultural and religious purposes.

DECISION AND ORDER

Upon review of the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED as follows:

The Planning Commission approves the application of Kaupulehu Developments for a Special Management Area ("SMA") Use Permit to allow the development of a resort-residential community with commercial facilities, residents' club, golf courses and clubhouse, Hawaiian interpretive center, public access and safety amenities and related ancillary facilities, on property located on the makai side of Queen Kaahumanu Highway adjacent and north of Kona Village Resort and Hualalai Resort developments at Kaupulehu, North Kona, County and State of Hawaii, identified as Tax Map Key:(3)7-2-003:Portion of 1. The approval is subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The effective date of the Special Management Area Use Permit shall be the effective date of the Kaupulehu Project District Ordinance.
3. The applicant shall comply with all applicable requirements of the Land Use Commission Decision and Order Docket No. A93-701 conditions of approval, and a copy of the written documentation of compliance with these conditions shall also be submitted to the Planning Director.
4. A detailed drainage study shall be prepared and submitted for approval by the Department of Public Works prior to submittal of plans for Subdivision Approval and Plan Approval review, whichever occurs first, for the residential, commercial and golf courses developments. The study shall take into consideration the tile drainage system, retention basins and 'reduced turf' design to be incorporated into the golf courses.
5. A drainage system based on the approved detailed drainage study shall be installed in each phase of development in the Project area:
 - A. prior to the issuance of a certificate of occupancy for the commercial area or the opening of a golf course, or
 - B. in conjunction with subdivision of residential lots, whichever occurs first in such phase.
6. The applicant shall prepare and submit to the Planning Director for approval a Landscaping Plan. The plan shall include areas for preservation and/or propagation and use of native plants and plants of cultural value.
7. Prior to the issuance of any grading permit on any portion of the proposed golf course development, an overall monitoring plan (including a baseline for quality of salt beds) on the potential pollution to groundwater and near shore coastal waters shall be approved by the State Department of Health. A copy of the approved plan shall be submitted to the Planning Director.
8. A marine life monitoring and mitigation plan shall be prepared and submitted for approval by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the State Department of Land and Natural

Resources (Division of Aquatic Resources) prior to the issuance of a grading permit and/or prior to any land preparation activity. A copy of the approved plan shall be submitted to the Planning Director.

9. The use of pesticides, biocides and herbicides in conjunction with all phases of the golf course operation shall conform with the applicable regulations of appropriate government agencies.
10. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
11. An archaeological mitigation and interpretation plan shall be prepared and submitted for approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division ("DLNR-SHPD") and Hawaiian community organizations, prior to submitting plans for plan approval review. The plan shall also include applicable conditions of approval of the Land Use Commission Decision and Order Docket No. A93-701. The Plan shall consist of three subplans: (1) an archaeological data recovery plan for the sites to undergo data recovery; (2) a detailed interim protection/preservation plan for the sites to undergo preservation, and (3) an interpretation plan which shall include buffer zones, signage, and long-range preservation concerns which may be submitted at a later date. Approved mitigation measures shall be implemented prior to issuance of any land use alteration permits for each phase of development within the project area.
12. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the DLNR-SHPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when the DLNR-SHPD finds that sufficient mitigative measures have been taken.
13. A final comprehensive public access plan, to be developed in consultation with community groups and in accordance with applicable conditions of approval of the Land Use Commission Decision and Order Docket No. A93-701, shall be submitted to the Planning Director and shall include mauka-makai lateral shoreline accesses, description of trail width and surfacing, parking area(s), signage, emergency response considerations, restrictions on use (if any), provision for recreational and restroom facilities at appropriate locations, and related improvements. The requirements of Chapter 34, relating to Public Access, of the Hawaii County Code shall be included in the plan. Implementation of the public access plan shall be completed with the opening of the golf course. The trail easement shall be recorded by metes and bounds.

14. The Integrated Resources Management Plan dated June 1998 or any amendments approved thereafter by affected agencies shall be made a part of this permit. The implementation recommendations and management guidelines shall govern the use of the Coastal Planning Area and other resources.
15. All electrical and communication utilities and systems within the Project site shall be placed underground, with the exception of the main 69 KV transmission line from the Mamalahoa Highway to the proposed electrical substation site.
16. The applicant shall maintain the Building Envelope development standards for the Kaupulehu Project District and shall be as illustrated in Figures 2-4 to 2-8 in the Special Management Area Use Permit application report.
17. A wastewater disposal system shall be constructed in a manner meeting with the approval of the State Department of Health and/or the Department of Public Works, whichever is applicable.
18. The applicant shall submit to the Planning Department a copy of the Mutual Agreement between the applicant, the Department of Land and Natural Resources and the Office of State Planning for any portion of the golf courses which are allowed within the 75-foot setback zone prior to submitting plans for Final Plan Approval for the golf courses.
19. No residential development or vertical improvements other than landscaping and improvements and uses allowed by the Kaupulehu Project District Ordinance shall be allowed within the 150-foot setback zone.
20. Any improvements within the 40-foot shoreline setback area shall be limited only to repairs of any trail or culturally significant item and shall be approved by either the Planning Director or the Planning Commission.
21. A Cultural Advisory Committee consisting of the applicant, Ka Pa'akai O Ka 'Aina, kamaaina residents of the ahupua'a, Planning Department, and/or other community groups as determined by the applicant, including as ex-officio members, the Department of Land and Natural Resources and the Department of Health, shall be established by the applicant to review plans for public access, implementation recommendations and management guidelines of the Integrated Resources Management Plan.
22. Hawaiian place names including regional place names shall be used in the overall development of the project. The names shall be reviewed for appropriateness by the Cultural Advisory Committee.
23. In Subzone A, which is detailed on the applicant's exhibits, a 500-foot setback zone from the certified shoreline shall be created. This area shall be restored to its natural and man-made historical content and maintained

thereafter by the applicant. No structures or improved roads shall be allowed within this area.

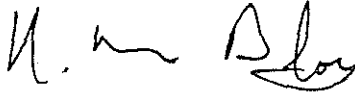
24. The applicant shall comply with all applicable laws, rules, regulations, and requirements of affected agencies.
25. An annual progress report shall be submitted to the Planning Director prior to each anniversary date of the approval of this permit. The report shall include, but not be limited to, 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.
26. 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, 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.

Ms. Anne Mapes
Page 17

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

LKaupu03.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
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Patricia K. O'Toole, Esq.
Planning Director
Mr. Norman Hayashi, SMA Section
Mr. Alexander C. Kinzler