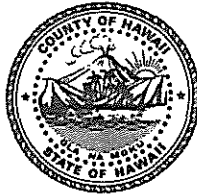


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

September 7, 1995

Ms. Anne Mapes
Belt Collins Hawaii
680 Ala Moana Blvd., First Floor
Honolulu, HI 96813-5406

Dear Ms. Mapes:

Special Management Area (SMA) Use Permit Assessment Application
No. 95-24 (SMAA 95-24)
Special Management Area Minor Use Permit No. 36
Applicant: HFI, Inc./Nintendo of America, Inc.
Request: Implementation of Emergency Seawall Improvements
TMK: 6-8-24: 33 and 34; Mauna Lani Resort, South Kohala, Hawaii

This letter is to follow-up our previous letter to you dated June 19, 1995, regarding the implementation of emergency temporary improvements to an existing seawall located within the subject property. Upon review of the above-described application, we are hereby issuing SMA Minor Use Permit No. 36 to allow the implementation of temporary emergency improvements to the existing seawall.

APPLICANT'S REQUEST

1. **Request:** The applicant proposes implementation of temporary emergency improvements to an approximately 300-foot section of an existing seawall located within the subject properties. The proposed improvements are necessary to relieve stress upon the existing seawall, which has deteriorated to the point where public safety is now a concern to the applicant. The proposed temporary emergency improvements will consist of the following:
 - a. Excavate the retained earth immediately mauka of the seawall to a depth of approximately 2.5 feet from its existing grade and a width of approximately 10 feet;

- b. Reduce the height of the seawall by approximately 2.5 feet to reduce lateral pressure on the wall;
 - c. Slope to grade an additional 7.5 feet located immediately mauka of the excavated area;
 - d. Erect a temporary barrier at 17.5 feet mauka of the seawall to prevent access to the excavated and graded area;
 - e. Place the excavated earth immediately mauka of the temporary barrier and form into an approximately 330 linear feet earthen berm no higher than 3 feet from the existing grade and approximately 15 feet wide. The earthen berm will thus be located between an existing lateral public shoreline access easement and the temporary barrier.
2. **Duration of Activity:** The proposed activities are anticipated to occur over the course of 2 or 3 days. Excavation will be accomplished with the use of one or more small backhoes. Access to the work area by the backhoes from Kaniku Drive will be provided through TMK: 6-8-24: 29, then over and across the existing lateral public shoreline access easement which traverses over and across adjoining parcels to the subject properties.
 3. **Estimated Cost:** The proposed improvements are anticipated to cost \$25,000.
 4. **Shoreline Setback:** Pursuant to our letter to your firm dated March 1, 1995, we determined that a shoreline setback variance will not be required for the proposed improvements within the 40-foot shoreline setback area since the wall was constructed prior to the adoption of rules regulating the shoreline setback area in 1970.

STATE AND COUNTY PLANS

5. **The State Land Use District** classification of the subject properties is Urban.
6. **The General Plan Land Use Pattern Allocation Guide (LUPAG) Map** designates the subject area as a Major Resort Area.
7. **County Zoning:** The subject property is zoned Multiple Family Residential-3,000 square feet per unit (RM-3) and Open (O) by the County. All of the subject improvements will be located within that portion of the properties zoned Open (O).

8. **SMA:** The subject property is located within the Special Management Area; therefore, this SMA Minor Permit is being issued in satisfaction of the requirements of the SMA.

SITE DESCRIPTION

9. **Physical Description:** The subject properties are located at the end of Kaniku Drive within The Cape at Mauna Lani subdivision. Parcel 33, within which most of the seawall improvements will occur, contains approximately 80,194 square feet of land area while Parcel 34 contains approximately 47,761 square feet. The entire makai boundary of Parcel 33 is defined as the shoreline (approximately 550 linear feet). Parcel 34 has only its northeastern makai corner adjacent to the shoreline. Each property is developed as a single family residential homesite. A 10-foot wide lateral public shoreline access easement and 5-foot wide walkway winds its way through both properties at a distance of at least 40 feet from the shoreline.
10. **Existing Uses:** The subject properties are currently developed for single family residential use.
11. **Archaeological/Floral/Faunal Resources:** Due to the existing use of the subject properties as single family residential homesites and the extensive improvements associated with its development, significant historical sites or features and the presence of endangered species of plants or animals are not anticipated to be located within the subject property.
12. **The Flood Insurance Rate Map (FIRM),** prepared by the Federal Emergency Management Agency (FEMA), designates the entire property as being located within an area subject to coastal flood inundation (Zone VE).
13. **Surrounding Uses:** Surrounding uses in the immediate vicinity of the subject properties consist of single family residential uses and vacant parcels which comprise The Cape at Mauna Lani. The remainder of The Cape at Mauna Lani is zoned RM-3 by the County.

INFRASTRUCTURE

14. **Access to the subject property** is provided by a private driveway access from Kaniku Drive, a privately-maintained roadway.

15. Water, electricity, and wastewater disposal is already provided to the subject property.

ASSESSMENT

The purpose of Chapter 205A-HRS, and Planning Commission Rule No. 9, Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the island's coastal zone areas. Special controls on development within these areas have been enacted to prevent permanent loss of valuable resources. Upon review of the subject request, the Planning Director finds that the implementation of temporary emergency improvements to an existing seawall within the subject properties are consistent with State and County Special Management Area policies, as outlined below:

- a) **Recreational Resources:** The proposed improvements will not interfere with recreational uses of the coastal area since all activities associated with said improvements will be concentrated on the subject properties. While the excavation and grading of the area immediately mauka of the existing seawall and the erection of a temporary barrier adjacent to the makai side of the lateral public shoreline access walkway may temporarily restrict the use of the shoreline areas for recreational activities, these hardships must be weighed against the benefits the proposed emergency seawall improvements have to offer. Emergency repairs to the seawall must be undertaken for the sake of public safety. All improvements approved under this SMA Minor Use Permit is temporary until a permanent solution for the repair of the seawall can be developed by the applicant. Lateral public shoreline access will not be inhibited by the proposed improvements, except during a period of 3 days when construction equipment are being utilized. During these three days when construction vehicles are present, lateral public access will be inconvenienced, rather than inhibited or restricted.
- b) **Historical and Natural Resources:** Due to extensive improvement of the subject properties associated with the construction of the single family residential dwellings, adverse impacts to historical or natural resources are not anticipated. Nevertheless, a condition will be included to require the notification of the Planning Department should archaeological sites be encountered.
- c) **Scenic and Open Space Resources:** The subject property is not located within an area recognized by the General Plan as an example of natural beauty. The temporary emergency seawall improvements are not anticipated to adversely affect the coastal viewplanes within this area. The property has already been developed with a single

family dwelling and related improvements. Therefore, the proposed earthen berm, temporary barrier and other improvements associated with the temporary emergency seawall improvements, when compared with existing structural improvements within the properties, will not adversely impact coastal viewplanes within the surrounding area.

- d) **Coastal Ecosystems:** Once excavation and grading has occurred, the potential for erosion and run-off and its impact to coastal ecosystems are possible. The applicant will abide by current construction practices and County grading requirements to ensure that such impacts are minimized. The existing seawall will also act as a physical barrier to prevent direct contamination of the shoreline area from potential run-off.
- e) **Economic Uses:** There are no direct economic benefits to be derived from the approval of the temporary emergency seawall improvements.
- f) **Coastal Hazards:** The entire property is affected by coastal flooding hazards. All structures to be located within the subject property must be constructed in accordance with the requirements of Chapter 27, Flood Control Code.

DETERMINATION

Based on the preceding assessment, the Planning Director has determined that the implementation of temporary emergency seawall improvements to an existing seawall which traverses the subject properties will not be contrary to the State and county policies governing the Special Management Area. The Planning Director hereby approves a Special Management Area Minor Permit, **subject to the following conditions:**

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the approval of this permit.
3. The implementation of temporary emergency seawall improvements as approved under this permit shall be completed within six (6) months from the approval date of

this permit. The applicant shall notify the Planning Department in writing of the completion of the approved seawall improvements.

4. A tentative plan for the permanent repair/improvement of the existing seawall shall be submitted to the Planning Department for review within one (1) year from the approval date of this permit.
5. 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 Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
6. The applicant shall comply with the applicable requirements of the Department of Public Works relating to building construction, grading and compliance with Chapter 27, Flood Control Code.
7. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this permit. The report shall include, but not be limited to, the status of the proposed improvements and the extent to which the conditions of approval of this permit are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.
8. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence;
 - b) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
 - c) 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).
9. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

Ms. Anne Mapes
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Please feel free to contact Daryn Arai of my staff at 961-8288 should you have any questions.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

DSA:dmo
SMM36.dsa

cc: Ms. Donna Kiyosaki, Chief Engineer
West Hawaii Office
SMA Section