

CERTIFIED MAIL

July 5, 1989

Ms. Anne L. Mapes
Belt, Collins & Associates
680 Ala Moana Boulevard, Suite 200
Honolulu, HI 96813

Dear Ms. Mapes:

Shoreline Setback Variance Application
Applicant: Kaupulehu Developments
Tax Map Key: 7-2-03:Portion of 1

The Planning Commission at its duly held public hearing on June 27, 1989, voted to approve the above application, Shoreline Setback Variance Permit No. 642, to allow the establishment of a pedestrian trail, landscaping, and removal of vegetation and ancillary elements (lighting, trash receptacles, benches) within the minimum 40-foot shoreline setback area. The area involved is adjacent and to the south of the Kona Village Complex traversing an approximate 1-mile stretch of land in a southerly direction to the southwest border of the property, Kaupulehu, North Kona, Hawaii.

Approval of this request is based on the following:

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of the improvements have disturbed the natural shoreline process and have caused erosion of the shoreline. To prevent unnecessary encroachment of structures and other improvements upon the shoreline, the legislature felt that it is in the best interest of the public to establish shoreline setbacks and to regulate the uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be required to be done or constructed within the shoreline setback area for protection of certain shoreline properties. Rule 8 of the Planning Commission

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recognizes this need and sets forth procedures for granting variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205-35(b) of the Hawaii Revised Statutes and Section 8.9 of the Planning Commission's Rule No. 8, the Planning Commission may grant variances within the shoreline setback area if it is found that:

1. Such structures, activities, or facilities are in the public interest; or
2. Hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline setback.

The applicant seeks to construct an improved lateral shoreline pathway with ancillary improvements along 1/2 mile of rocky shoreline and to provide an improved accessway along 1/2 mile of sandy shoreline for the length of the property within the minimum 40-foot setback area. The requirements for lateral access have been included as a condition of State Land Use boundary reclassification in 1986, Change of Zone Ordinance No. 88-157, and SMA Use Permit Nos. 271 and 272 in 1988. The approval of this request would serve as partial implementation of these conditions and is in the public interest. The topography of the southern portion of the property consists of A'a and Pahoehoe lava flows and is not easily traversable except by the existing coastal foot trail (Archaeological Site Nos. T-26 and T-107). The proposal would create a situation where lateral access is facilitated by improved pathways, lighting, and benches. The siting of trash receptacles would also be in the best interest of the public health and welfare. It must be emphasized that the implementation of a lateral access can only occur with a comprehensive overall public access plan for the property. This, along with an anchialine pond management plan and intensive archaeological survey and mitigation plans, must still be submitted to and approved by the Planning Department. The lateral access would lead to ponds, archaeological sites, and a stand of mangroves which will be worked into an interpretive program for the resort projects. Thus, public awareness and education of our coastal resources would be heightened.

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Further, the clearing of vegetation to create a natural accessway and the planting of additional landscaping to reduce erosion should not interfere with the natural shoreline processes, nor will the proposed activity impact upon the scenic vistas of the natural coastline and open space since no structural activity is proposed. The applicant will be required to comply with the requirements of Chapter 27 relating to Flood Control and would not be able to block or impede flow of a natural waterway or induce or aggravate flooding. The Department of Public Works has also stated that man-made alteration of sand dunes and mangrove stands is prohibited.

The proposed development is consistent with the General Plan, the Zoning Code, and other applicable ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map identifies the area for Resort-Hotel and Open uses.

Finally, this approval shall not prejudice any request before the Board of Land and Natural Resources for land exchange of the existing coastal trail with the improved lateral shoreline access, nor shall this approval be construed to endorse the proprietary or historical disposition of the existing coastal trail.

Based on the foregoing, it is determined that the proposed lateral pedestrian access and related improvements are consistent with the purpose and intent of Rule 8 of the Planning Commission relating to Shoreline Setback.

Approval of this request is subject to the following conditions:

1. The petitioner, its successors, or assigns shall be responsible for complying with all conditions of approval.
2. Detailed plans for the lateral access pathway shall be submitted to the Planning Department for review and approval in conjunction with a comprehensive public access plan, an intensive archaeological survey and mitigation plan, and anchialine pond management plan for the property prior to securing Final Plan Approval and/or obtaining a grading permit for any land preparation activity on the property, whichever occurs first. Access shall be coordinated with adjoining properties to the north and south to ensure continuous and safe access along the coastline.

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3. The approved lateral access pathway shall be delineated in perpetual easement within the subject property which shall be submitted to the Planning Department for review and approval subsequent to securing Final Plan Approval for any development on the subject property. A copy of the easement description shall be recorded with the State Bureau of Conveyances and filed with the Planning Department prior to receipt of an occupancy permit for any development on the property.
4. Construction of the pathway shall occur concurrent with the development of the first hotel or residential development and shall be completed prior to receipt of an occupancy permit for any development on the property.
5. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Department notified. No work within the affected area shall resume until clearance is obtained from the Planning Department.
6. The applicant, its successors, or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, or assigns, officers, employees, contractors, and agents under this variance or relating to or connected with the granting of this variance.
7. Comply with all applicable conditions of SMA Use Permit Nos. 271 and 272.
8. Comply with all other applicable laws, rules, regulations, and requirements, including those of the Department of Public Works.
9. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the permit. The report shall address the status of the development and the compliance with the conditions of approval. 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.

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10. 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 petitioner, 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; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the director may initiate procedures to nullify 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.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Gary Mizuno
Chairman, Planning Commission

xc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
DBED, CZM Program w/background
DLNR/Honolulu

bcc: Plan Approval Section