

CERTIFIED MAIL

January 9, 1989

Mr. Harold Spector  
Alii Drive Partners  
745 Fort Street, Suite 205  
Honolulu, Hawaii 96813

Dear Mr. Spector:

Change of Zone, Special Management Area (SMA) Use Permit,  
and Use Permit Applications  
TMK: 7-5-20:73, 74 & 75

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The Planning Commission at its duly held public hearing on December 28, 1988 reviewed and acted on the above applications for a Change of Zone, SMA Use Permit No. 278, and Use Permit No. 64, for the above described property.

The Commission voted to send a favorable recommendation to the County Council on the change of zone application, subject to the following conditions:

A. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.

B. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety days from the date of approval of the change of zone. The zoning on the property shall not be in effect until the payment is accepted by the Department of Water Supply and a water commitment is formerly issued.

C. Plans for the consolidation of the affected properties shall be submitted within one year from the effective date of the change of zone.

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D. Final Plan Approval for the entire development shall be secured from the Planning Department within one year from the effective date of the change of zone. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured.

E. Construction shall commence within one year from the date of receipt of Final Plan Approval and be completed within three years thereafter.

F. An intensive archaeological survey and mitigation plan shall be submitted to the Planning Department for review and approval at the time of plan approval review and/or prior to any land preparation activity being conducted on the property.

G. Should any unanticipated archaeological/historic sites or features of importance be uncovered during land preparation activities, work in the affected area shall cease immediately and the Planning Director shall be notified. Work in the affected area shall not resume until such time that clearance is obtained from the Planning Director.

H. Access(es) to the property shall meet with the approval of the Department of Public Works.

I. Should an Improvement District be implemented for the construction of the proposed Alii Highway, the applicant, successors or assigns shall automatically be a participant in the Improvement District.

J. An emergency preparedness and response plan shall be submitted to the Planning Department and Hawaii County Civil Defense Agency for review and approval prior to occupancy of any of the proposed units.

K. The method of sewage disposal shall meet with the approval of the appropriate governmental agencies.

L. All other applicable laws, rules, regulations and requirements, including those of the Department of Water Supply relative to the provision of additional water system improvements, shall be complied with.

M. Should the council adopt a Unified Impact Fees ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein may, at the developer's election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance.

N. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the zone change. 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.

O. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances: 1) 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; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone; and 4) 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); and 5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate rezoning of the area to its original or more appropriate designation.

Approval of the SMA Use Permit and Use Permits are also subject to the following conditions:

SMA USE PERMIT

1. This permit shall not be in effect until the accompanying change of zone request has been approved.

2. The applicant, successors, or its assigns shall comply with all of the stated conditions of approval.

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3. In the design and layout of the proposed buildings, due consideration shall be given relative to the provision of a mauka-makai view corridor from the proposed Alii Highway to the coastal areas.

4. All affected conditions outlined in the accompanying change of zone ordinance shall be complied with.

5. All other applicable laws, rules, regulations and requirements shall be complied with.

6. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this 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.

7. The Planning Director may administratively grant extensions to the foregoing conditions subject to any of the following circumstances occurring: A) the need for an extension is the result of either unforeseen conditions or are circumstances beyond the control of the applicant, successors or assigns; 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).

8. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion after the Planning Director has given the permittee notice, this permit may be voided by the Planning Commission.

#### USE PERMIT

1. This permit shall not be in effect until the accompanying change of zone and Special Management Area (SMA) Use Permit have been approved.

2. The applicant, successors, or its assigns shall comply with all of the stated conditions of approval.

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3. All affected conditions outlined in the accompanying change of zone ordinance, including those relative to requirements for the submission of plans for plan approval review and construction timetable, shall be complied with.

4. All other applicable laws, rules, regulations and requirements shall be complied with.

5. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this 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.

6. The Planning Director may administratively grant extensions to the foregoing conditions subject to any of the following circumstances occurring: A) the need for an extension is the result of either unforeseen conditions or are circumstances beyond the control of the applicant, successors or assigns; 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).

7. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion after the Planning Director has given the permittee notice, this permit may be voided by the Planning Commission.

Should you have any questions regarding the above, please feel free to contact the Planning Department at 961-8288.

Sincerely,



Gary Mizuno  
Chairman, Planning Commission

xc: Mr. Tyrone Kusao  
Department of Public Works  
Department of Water Supply  
Planning Office - Kona  
bcc: Plan Approval Section