

KA LĀHUI HAWAI'I
North Kona District
Post Office Box 4551
Kailua-Kona, Hawaii 96745

September 14, 1995

Planning Commission
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Re: Application of Oceanside 1250 for 1) Change of Zone (756 acres); 2) Special Management Area Use Permit (110 acres); 3) Amendment to Conditions of Change of Zone Ordinance 94-73

Planning Commission Chair and Commission Members:

Aloha. My name is Maile David and I submit this testimony on behalf of Ka Lāhui Hawai'i in my capacity as North Kona District Po'o and also on behalf of Charles Young, South Kona District Po'o.

I. Background

When we last came before this body in 1993, testimony submitted at that time was based primarily upon our position that in the event the Application be approved, Ka Lāhui Hawai'i would request that the petitioner work with Ka Lāhui Hawai'i and other Hawaiian organizations to develop a Shoreline Park Management Plan. Because of its cultural and historical value and significance, protection and preservation of the archaeological sites located within the conservation district, the proposed coastline park, as well as the entire project area, has always been and is the basis of Ka Lāhui Hawai'i's participation in this matter. Ka Lāhui Hawai'i stands firm against any proposed development within these areas and understood that no development would occur within the proposed 140-acre coastline park.

This Commission granted petitioner's 1993 application and included a condition of approval that petitioner work with Ka Lāhui Hawai'i and others to develop such a shoreline management plan. When the matter went before the County Council, the Planning Commission 1993 permit condition that petitioner work with Ka Lāhui Hawai'i and others was eliminated. Additionally, the County Council imposed Condition No. (H)(3) to Ordinance No. 94-73 which stated:

"No more than a total land area of twelve (12) acres shall be permitted to be constructed, operated and maintained as part of the applicant's golf course, approved as Use Permit No. 115, and included within the coastline park or the existing conservation district lands;"

A year has gone by and since the deletion of the Planning Commission's 1993 permit condition and upon being informed of Condition No. (H)(3) to Ordinance No. 94-73, Ka Lāhui Hawai'i has not been notified of any Shoreline Park Management Plan meetings. Our last meeting with Petitioner was in August, 1994.

We come before this body again to address our concerns regarding the three applications before you.

II. Discussion

A. "2.0 Summary of Anticipated Impacts of the Proposed Project on the Special Management Area."

Section 2.1.7 entitled "Historical/Archaeological Resources" states that an archaeological inventory survey was conducted of the 1,567-acre parcel, and that the primary goal was "identification" of any and all cultural resources within the total project area. It further sets forth how many sites were identified and how many are being recommended for preservation. Nowhere in this summary does the petitioner address the anticipated "impacts" the project may have on the historical/archaeological resources within the Special Management Area and that the survey was "designed" to meet the requirements of the DLNR-SHPD. The foregoing does not constitute a summary of anticipated impacts nor does it provide the Planning Commission with sufficient information to enable it to consider cultural and historic values, versus the need for economic development.

B. "2.2 Probable Impacts of Proposed Action on the Environment and Mitigation Measures."

Section 2.2.6 entitled "Archaeological/Historical Resources" states that petitioner will follow recommendations of the consulting archaeologist, subject of course, to approval from DLNR-SHPD. It also lists what sites will be preserved, etc., but no reference to probable impacts or mitigation measures. Are we to assume there will be no impact to any of the sites?

C. "2.3 Any Probable Adverse Environmental Effects Which Cannot be Avoided."

Section 2.3.4 "Archaeological/Historical Resources". Petitioner has failed to identify "sites with moderate or low research, interpretive, or cultural values" that may be destroyed, after data recovery, with site development. Who will make such a determination, and shouldn't this information be brought before this commission so it can make its own assessment?

Petitioner represents that increased opportunities for public access may increase the potential for loss or vandalism of historic sites. Given the "benefit" petitioner has represented this project will provide by allowing public access to an area otherwise inaccessible for over a hundred years, has sufficient information been brought before the Planning Commission for it to adequately assess and determine impacts upon an otherwise "untouched" historical area?

III. Conclusion

Ka Lāhui Hawai'i respectfully requests that the Planning Commission deny petitioner's applications at this time based on the above, and also the following:

1. Pending civil litigation with respect to Ordinance No. 94-73. As no judicial determination has been made in this case, applications filed by petitioner should be deferred.

2. The Opinion of the Court By Klein, J. Re: Kohanaiki (Pilago/PASH v. Hawaii County Planning Commission, et. al), filed August 31, 1995 in the Supreme Court of the State of Hawaii.

Although addressing the issue of standing to participate in a contested case hearing on an application by Nansay Hawaii, Inc. for an SMA use permit, the court in its Opinion, affirmed the obligation of the Hawaii Planning Commission to protect customary and traditional rights of native Hawaiians.

Under the section entitled "Obligations Under the CZMA" the court states:

"Within the scope of their authority, 'all agencies' in Hawai'i must ensure that their rules comply with the objectives and policies of the CZMA. HRS §§205A-4(b) and -5. Moreover, the neighbor island county planning commissions and the Honolulu City Council are specifically

required to give 'full consideration ... to ... cultural ... [and] historic ... values as well as to needs for economic development' when implementing the objectives, policies, and SMA guidelines set forth in the CZMA."

The implications of the Opinion of this case should be reviewed by the Planning Commission.

3. Act 270, Session Laws 1994

Changes to conservation district regulation (House Bill 3445) establishes a new permitting system designed to promote a true conservation ethic. Act 270 will have a direct impact on the conservation district within the project area and thus any decision affecting conservation district lands should not be made until the DLNR completes its Resource Inventory, Subzone Reclassification and Management Plan.

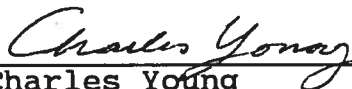
4. Review Commission on the State Water Code.

Should the recommendations of the Review Commission be enacted by the Hawaii State Legislature the new water code will affect this development. The Planning Commission should defer any applications which will substantially impact water resources until it can adequately determine what those impacts will be.

It is our position that the foregoing reasons justify the denial of Oceanside 1250's applications at this time and granting the permits would be grossly premature and may result in time consuming and costly appeals. Mahalo for your consideration.



Maile P. David
North Kona District Po'o
Ka Lāhui Hawai'i



Charles Young
South Kona District Po'o
Ka Lāhui Hawai'i

cc: Mililani Trask, Kia 'Aina
Clara Matthews, Nat'l Land Chair
Clarence Kauahi, Hawaii Island Chair
Clara Kakalia, Hawaii Island Land Chair