

GET Committee

From: Samuel Small <info@mauicauses.org>
Sent: Friday, February 1, 2019 1:55 PM
To: GET Committee
Subject: More Questions for Director David Goode - (GET-1(6))
Attachments: David Goode - Smith Development.pdf; Olowalu Goode Subdivision Approval.pdf; Olowalu Notice of Non Compliance.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Council Members

Here are a few more questions you may want to ask of Director Goode:

Question(s) for Director Goode

We all know Mr. Goode that you have been involved with the Development industry before and in between your two terms as Director.

1. How do you draw the line between serving the public interest and making decisions as a Director that may provide benefits to a developer you have employment history with?
2. Did you ever make decisions for private developers as a Director that you ultimately went work for?
3. Tell us about the Pu'u Kahana Development in West Maui. Did you issue the preliminary subdivision approval for that development?
4. Did you go to work for Smith Development for compensation right after issuing the preliminary subdivision approval?
5. Were you the director who signed off on the Olowalu subdivision? How is that we see a repeating pattern where you sign off on subdivisions that have unfulfilled SMA permit conditions?

BACKGROUND:

Violation #1 Conflict of interest: Subdivision approval for future employer

On the pages numbered 26 & 27 of the attached PDF document "David Goode - Smith Development" you will find the history of David Goode's and Michele McLean's employment and involvement with Smith Development.

In violation the Maui County Charter, David Goode issued preliminary subdivision approval to Smith Development and immediately went to work for the Developer and began soliciting the subdivision for final approval. Michael McLean was the Smith Development land planning consultant.

After years of intervention from neighbors, the Planning Commission denied the development.

Violation #2 Conflict of interest: Erasing Subdivision Conditions for future employer

On the page numbered 28 of the attached pdf "David Goode - Smith Development" you will find the history of David Goode's erasing of subdivision engineering conditions on another Smith Development just prior to going to work the developer.

Violation #3 Negligence: Issuing Final Subdivision Approval with unfulfilled SMA Major Permit

PDF Document attached: Olowalu Goode Subdivision Approval

Director David Goode issued final subdivision approval for the Olowalu Mauka Subdivision with an unfulfilled SMA Major Permit.

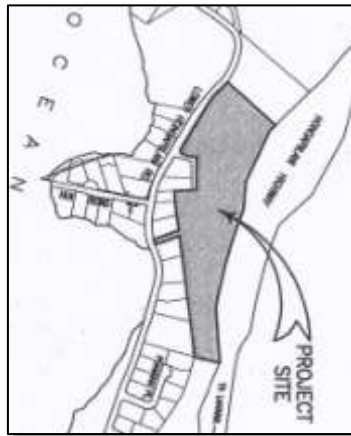
PDF Document attached: Olowalu Notice of Non-Compliance

Nine years later after resident complaints and intervention, zoning inspection Sonny Huh notice the Developer of Non Compliance with 9 conditions of the SMA Major Permit.

Respectfully,
Sam Small,
Director, Maui Causes

In 2002, Public Works Director David Goode issued Preliminary Subdivision Approval for the Pu'u Kahana development application submitted by Smith Development.

In 2003, David Goode, acting as Vice President of Development Operations for Smith Development, received compensation for soliciting the final approvals of the same ongoing Pu'u Kahana development application.



January 14, 2002

Mr. Warren S. Unsworth, President
WARREN S. UNSWORTH ENGINEERING, INC.
2140 Waiolu Street, Suite 402
Waiolu, Hawaii 96793

RECEIVED
JAN 15 2002
WARREN S. UNSWORTH ENGINEERING, INC.

SUBJECT: PUU KAHANA SUBDIVISION
TMK(2) 4-3-001-039
LUGA FILE NO. 4-842

Dear Mr. Unsworth:

Preliminary approval was granted to the subject subdivision on January 14, 2002. Final approval shall be contingent upon compliance with the following conditions:

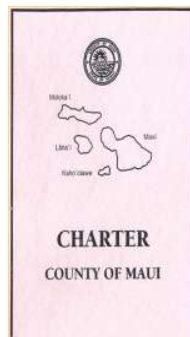
- Requirements/comments from Maui Electric Company:
 - Electricity is available from nearby existing facilities (overhead and/or underground)
 - Requires line extension (overhead and/or underground) within existing County or State road right-of-way
 - Requires line extension (overhead and/or underground) within private road or property.
 - Requires easements from owners/subdivider/developer within subdivision for new or existing MEED facilities.

Comments: See 108

If you have any...

2002

David C. Goode
Director of Public Works
County of Maui



SMITH DEVELOPMENT Real Estate Development & Consulting

1001 Makawao Avenue, Suite 200, Makawao, HI 96768
Phone: (808) 572-3011 Fax: (808) 572-8378
www.Smithdev.com email: SDC@SDCHawaii.com

September 23, 2003

Puu Kahana Neighboring Property Owners

RE: Additional Information Regarding the Proposed Puu Kahana Residential Subdivision Located at TMK 4-3-001-039

Dear Neighboring Property Owner,

In an effort to provide you with the latest project related information, enclosed please find copies of FEMA's letter of map revision regarding detailing out the existing floodways in Ka'opala Gulch and findings from a water quality report on Ka'opala and Keonani Riys prepared by Sea Engineering.

Should you like additional information on either of these reports, please contact Yachia at Smith Development offices.

If you have any questions or comments regarding these two reports, please forward them to our office by October 8, 2003.

Sincerely,
David C. Goode
David C. Goode
Vice President
Development Operations

2003

Sincerely,
David C. Goode
David C. Goode
Vice President
Development Operations

THE MAUI COUNTY CHARTER

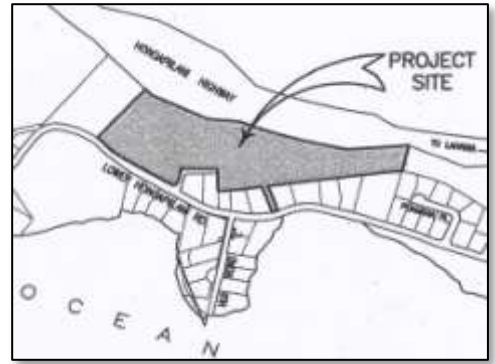
PROHIBITIONS 1.f. NO OFFICER OR EMPLOYEE OF THE COUNTY SHALL RECEIVE ANY COMPENSATION FOR ANY SERVICE RENDERED IN BEHALF OF ANY PRIVATE INTEREST AFTER TERMINATION OF SERVICE TO OR EMPLOYMENT WITH THE COUNTY IN RELATION TO ANY CASE, PROCEEDING, OR APPLICATION WITH RESPECT TO WHICH THE OFFICER OR EMPLOYEE WAS DIRECTLY CONCERNED, OR WHICH WAS UNDER HIS OR HER ACTIVE CONSIDERATION..

PROHIBITIONS 2.b. NO FORMER NON ELECTED SALARIED EMPLOYEE OF THE COUNTY SHALL APPEAR FOR COMPENSATION BEFORE ANY DEPARTMENT OR OTHER AGENCY OF THE COUNTY BY WHICH SUCH EMPLOYEE OR OFFICER WAS LAST EMPLOYED WITH A PERIOD OF ONE YEAR AFTER TERMINATION OF SERVICE TO OR EMPLOYMENT WITH THE COUNTY.

10.5. PENALTIES. ANY PERSON WHO VIOLATES WTHE PROVISION OF THIS ARTICLE SHALL BE SUBJECT TO A FINE TO BE PROVIDED FOR BY ORDINANCE ADOPTED BY THE COUNTY COUNCIL AND IN ADDITION MAY BE SUSPENDED OR REMOVED FROM OFFICE OR EMPLOYMENT..

In May of 2003, after 2 years of public intervention, the Department of Planning and the Department of Corporation Counsel agreed with concerned neighbors and Christopher Salem and denied the Pu'u Kahana subdivision application and Special Management Area use permit.

In June of 2003, Christopher Salem, a neighbor to the denied development, was sent a threatening email from Smith Development that made parallel references to events of murder.



Smith Development Consultants

2003

Department of Planning

NOTICE OF DENIAL

COUNTY OF MAUI
DEPARTMENT OF PLANNING

May 1, 2003

Mr. Kent Smith
Smith Development
1040 Makawao Avenue
Makawao, Maui, HI

Dear Mr. Smith:

RE: Change in Zoning and Special Management Area (Use Permit) Applications for the Pu'u Kahana Project, TMSL: 4-3-001-030, Kahana, Maui, Hawaii (CZ: 2001-007) & (SM: 2001-002)

The Planning Department has consulted with the Corporation Counsel's office on the matter of new public hearings for the above Change in Zoning and Special Management Area Use Permits. It is the opinion of the Deputy Corporation Counsel that with the preparation of an Environmental Assessment for this project, new information which was not available at the public hearings will be presented as part of the EA process. This information must be part of the record, and as such, new public hearings will be required.

If you have further questions, please contact this office at 270-7735.

Sincerely,
Michael W. Foley
MICHAEL W. FOLEY
Planning Director

Notice of Denial

2002

Smith Development Consultants

PUU KAHANA
Application for Zoning and Special Management Area Permits

PAUL JOHNSON PARK & NILES
ATTORNEYS AT LAW & LAW CORPORATION

June 21, 2003

VIA FACSIMILE TELEPHONE

Jack S. Nardich, Esq.
P.O. Box 790279
Palo, HI 196759

MAUI POLICE DEPARTMENT

RE: [Redacted]

Dear Mr. Nardich:

We do not have any further information regarding the above project. The information provided to us is insufficient to allow us to proceed with the project. We are sorry that we cannot provide you with the information you requested. We are sorry that we cannot provide you with the information you requested. We are sorry that we cannot provide you with the information you requested.

Smith Development Consultants

2002

2003

Police Report

PAUL JOHNSON PARK & NILES
ATTORNEYS AT LAW & LAW CORPORATION

June 21, 2003

VIA FACSIMILE TELEPHONE

Jack S. Nardich, Esq.
P.O. Box 790279
Palo, HI 196759

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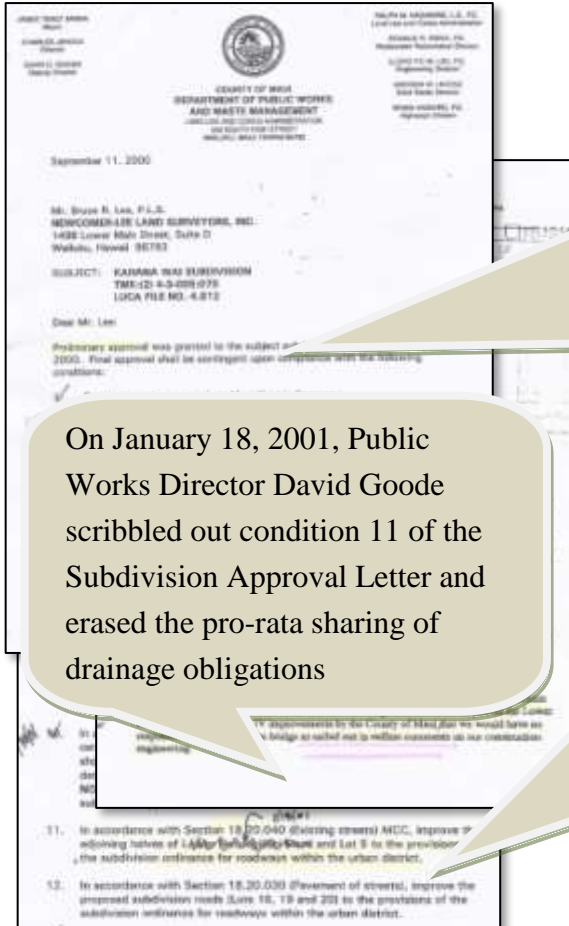
Smith Development Consultants

Police Report

Smith Development's Land Planning Consultant, Attorney, and Vice President of Development Operations for the Pu'u Kahana Subdivision are all former high ranking employees with the County of Maui.

September 11, 2000, in accordance with the Maui County Code, Section 18.08.100, Deputy Director of Public Works David Goode issued Preliminary Subdivision Approval to Smith Development for the 17 Lot Kahana Vai Subdivision along Lower Honoapiilani Rd. The Subdivision conditions of Approval included roadway improvements to Lower Honoapiilani Road & pro-rata sharing of drainage improvements to Kahananui Stream.

On January 18, 2001, Public Works Director David Good scribbled out Condition #11 of the Subdivision Approval letter. The Developers roadway and drainage obligations with be paid with County, State, and Federal taxnaver funds.



Condition 11 – In accordance with Section 18.20.040 improve the adjoining halves of the Lower Honoapiilani Road.
 Condition 13a. – Required to participate in the pro-rata share of drainage improvements to the Kahanarui Stream.
 Condition 13b. – The applicant, it’s successors or assigns shall participate in their pro-rata share of traffic improvements as determined by the Director of Public Works..

On January 18, 2001, Public Works Director David Goode scribbled out condition 11 of the Subdivision Approval Letter and erased the pro-rata sharing of drainage obligations

“We agreed that the fact the bridge is to be rebuilt as part of Lower Honoapiilani Road Phase IV improvements by the County (at the citizen’s expense) that we would have no responsibility to improve the bridge as called out (by the County Engineering Division) on our the redline comments on our construction drawings.”
Smith Development
Letter to Public Works Director David Goode–January 2001

THE MAUI COUNTY CODE

18.08.100 APPROVAL. C. APPROVAL OF THE PRELIMINARY PLAT SHALL INDICATE THE DIRECTOR’S DIRECTIVE TO PREPARE DETAILED DRAWINGS ON THE PLAT SUBMITTED. PROVIDED THERE IS NO CHANGE IN THE PLAN OF SUBDIVISION AS SHOWN ON THE PRELIMINARY PLAT AND THERE IS FULL COMPLIANCE WITH ALL REQUIREMENTS OF THIS CHAPTER. THE ACTION OF THE DIRECTOR WITH REFERENCE TO ANY ATTACHED DOCUMENTS DESCRIBING ANY CONDITIONS SHALL BE NOTED ON TWO COPIES OF THE PRELIMINARY PLAT. ONE COPY SHALL BE RETURNED TO THE SUBDIVIDER AND THE OTHER RETAINED BY THE DIRECTOR. AT SUCH TIME THE DIRECTOR SHALL STAMP THE TWO PRELIMINARY PLATS; AS FOLLOWS:

1. “SUBDIVIDER AUTHORIZED TO PREPARE DETAILED DRAWINGS ON PLAT AS SUBMITTED INCLUDING CORRECTIONS NOTED.”

Mayor

DAVID C. GOODE
Director

MILTON M. ARAKAWA, A.I.C.P.
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT

LAND USE AND CODES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

Land Use and Codes Administration

TRACY TAKAMINE, P.E.
Wastewater Reclamation Division

LLOYD POW LEE, P.E.
Engineering Division

JOHN D. HARDER
Solid Waste Division

BRIAN HASHIRO, P.E.
Highways Division

April 30, 2002

Mr. Robert Horcajo, Project Manager
OLOWALU ELUA ASSOCIATES, LLC
173 Hoohana Street, Suite 201
Kahului, Hawaii 96732

SUBJECT: **OLOWALU MAUKA SUBDIVISION**
TMK: (2) 4-8-003:010, 050-070, & 073-082
(2) 4-8-004:011-016
LUCA FILE NO. 4.766

Dear Mr. Horcajo:

Final approval for the subject subdivision (consolidation of 38 lots and resubdivision into 34 lots and 5 roadway lots) has been granted on April 30, 2002. This final approval is based upon Section 18.04.020(C) of the Maui County Code (Ordinance 2372). An approved final plat is enclosed for your records.

The State of Hawaii, Department of Land and Natural Resources, State Historic Preservation Division has attached the following condition to this final approval:

"...the terms specified in the accepted preservation plan and burial treatment plan are followed and an acceptable archaeological monitoring plan for sites 4820 and 4821 is submitted to this office for review prior to the commencement of any ground-altering activities. In addition, an acceptable report documenting the findings of the monitoring activities will be submitted to this office for review upon 180 days following the completion of the proposed undertaking."

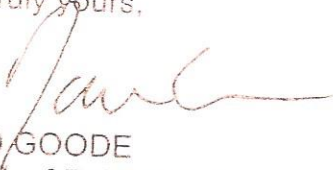
In accordance with Section 18.04.020(D) of the Maui County Code, the lots created by this subdivision shall not qualify for this exception with respect to any subsequent consolidation/resubdivision of any of the parcels.

Mr. Robert Horcajo, Project Manager
SUBJECT: OLOWALU MAUKA SUBDIVISION
LUCA FILE NO. 4.766

April 30, 2002
Page 2 of 2

If you have any questions regarding this letter, please call Mr. Lance Nakamura of our Land Use and Codes Administration at 270-7252.

Very truly yours,



DAVID GOODE
Director of Public Works
And Waste Management

Enclosure: Approved Final Plat

LSN by S:\LUCA\ALL\SUBD\LUCASUBD\REG\4-766-1.10

- xc: Dept. of Finance, Real Property Tax Division w/final plat
- Dept. of Finance, Tax Map Division w/final plat
- Building Permit Section w/final plat
- Engineering Division w/final plat
- Dept. of Planning w/final plat
- Dept. of Water Supply w/final plat
- Police Dept. w/final plat
- State Dept. of Health w/final plat
- Maui Electric Co. w/final plat

CHARMAINE TAVARES
Mayor
JEFFREY S. HUNT
Director
KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

April 26, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
#7007 2560 0001 7799 7861

Olowalu Elua Associates, LLC
33 Lono Avenue, Suite 450
Kahului, Hawaii 96732

Attention: Mr. Peter Martin

Dear Mr. Martin:

SUBJECT: REQUEST FOR SERVICE NO. 10-0000452: FAILURE TO COMPLY WITH SPECIAL MANAGEMENT AREA (SMA) USE PERMIT FOR THE OLOWALU SUBDIVISION, LOCATED AT OLOWALU, MAUI, HAWAII; TMK(S): (2) 4-8-003:005, 10 (POR.), 41, 42, 43, 50 (POR.), 63 (POR.), AND 78 (POR.); AND (2) 4-8-004:011, 12, 13, 14, 15, AND 16 (SM1 99/0021)

This is in reply to your letter dated March 15, 2010, attached as Exhibit No. 1, a response letter to our Notice of Warning issued on February 25, 2010.

The following are responses to your replies to Conditions No. 2, 4, 8, 11, 12, 14, 19, 32, and 33, attached to SM1 99/0021. The original conditions of approval for SM1 99/0021 are attached as Exhibit No. 2:

Condition No. 2 - The project was to commence no later than September 30, 2002, which it did; however, Condition No. 2 states that the project "shall be completed within five years after the date of initiation." Failure to complete this project within the five-year period coupled with no recorded and/or approved time-extension requests may indicate that this SMA Use Permit 99/0021 has been automatically terminated;

Condition No. 4 - Final construction does not appear to have been completed and current construction does not appear to be in accordance with preliminary subdivision plans received on November 9, 1999. Dirt fire roads do not appear to have been completed according to the Uniform Fire Code with the road ending in a locked gate at the Honoapiilani Highway, the preservation plan is not fully implemented, few greenways have been installed, bikeways are not evident, and highway improvements for ingress and egress off the Honoapiilani Highway have not commenced. The interior road system as originally designed on the subdivision plan does not appear to match that which was constructed. The road identified as Luawai Street at the Olowalu Mauka Subdivision sign is not in agreement with the plans filed with the County and appears to have been constructed without revisions to the subdivision map;

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

Condition No. 8 - Full compliance with government regulations has not occurred as the project is out of compliance with both the SMA conditions and the Conservation District Use Permit (CDUP) conditions as noted in this letter;

Condition No. 11 - The property has not been developed in substantial compliance with the representations made to the Maui Planning Commission (Commission). At this time it appears this failure to develop the property in accordance with the SMA may lead to the revocation of this SMA Use Permit 99/0021;

Condition No. 12 - Infrastructure improvements including roads, traffic related improvements, greenways, and possibly drainage have not been completed prior to final subdivision approval and bonds are not on file with the County per the wording of Condition No. 12;

Condition No. 14 - The roadways do not appear to have been constructed in substantial compliance with the greenway plan. The greenways do not appear to have been completed per the application plan and neither have improvements been made for a channelized intersection and means of ingress and egress from the Honoapiilani Highway as noted in the subdivision plans;

Condition No. 19 - The preservation plan has not been implemented. There is no evidence of viewing platform construction for historical sites No. 4710 and No. 4718 as outlined in the Department of Land and Natural Resources (DLNR) letter of March 7, 2002. The growth of invasive species of trees and bushes is evident especially at the important site No. 04, Kawaiialoa/Kaiwaloa heiau. Little to no maintenance appears to be occurring on numerous sites. There is no interpretative signage evident at the sites. The condition of the petroglyph viewing site in the Olowalu valley is in very poor condition. There is no interpretative signage, the red railings are unsafe and deteriorated, and the platforms for viewing are nonexistent;

Condition No. 32 - No roadway improvements for ingress and egress from the Honoapiilani Highway to the Mauka Subdivision have been initiated per the Environmental Assessment (EA) and the Subdivision plans. The originally approved highway improvements consisted of Driveways A, B, C, and D as noted in the Final EA and plans submitted to the Commission for review and approval. Driveways A, B, C, and D are depicted on the original subdivision plans that were included in the traffic study and EA submitted by the developer in connection with the issuance of the SMA. The developer is now proposing a relocation of Driveway D. This revised proposal was discussed with the Maui Department of Transportation (DOT) in 2003. However, no EA has been completed to date although a Draft EA is being processed by Munekiyo & Hiraga, Inc. as of late 2009. This relocation of Driveway D may be problematic in its connection with the internal road system for the development, the increase in traffic in this area, and the plan originally approved by the Commission. The relocation of Driveway D does not connect to an approved Olowalu Mauka subdivision access road approved in the original subdivision. Failure to complete a channelized intersection according to plan with left turn lanes, acceleration lanes, bike lanes, and paved shoulders is a violation of the SMA conditions. Although there was a caveat to hold off developing the highway improvements if a phasing plan for project development was agreed to, no phasing plan is evident and at this stage of the development there should have been roadway improvements as initial phases of

Mr. Peter Martin
April 26, 2010
Page 3

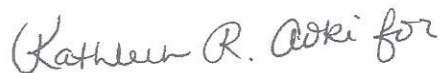
the project have been completed. There is no evidence of this "phasing plan" on file with the DOT. The inability of the Developer to move forward on this critical road improvement signals non-compliance with the SMA conditions. The efficacy of a relocation of Driveway D from that originally proposed is not evidenced in any updated traffic report analysis on file. The original Olowalu Mauka roadway system connects to the original location of Driveway D, not the relocated Driveway D as proposed; and

Condition No. 33 - The roadway light within the subdivision meeting a maximum wattage of 100 w hps does not appear to have been completed.

In conclusion, the Olowalu Subdivision is in noncompliance with SM1 99/0021 according to a project site visit held on January 22, 2010, for Conditions No. 2, 4, 8, 11, 12, 14, 19, 32, and 33, as approved by the Commission on September 19, 2000.

Thank you for responding to your Notice of Warning. Please be advised that a Notice of Violation will be issued if the responsible party does not show any effort to comply with our Notice of Warning. Should you require further clarification, please contact Staff Planner Kurt Wollenhaupt at kurt.wollenhaupt@mauicounty.gov or at (808) 270-1789.

Sincerely,



JEFFREY S. HUNT, AICP
Planning Director

Attachments

xc: Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Kurt F. Wollenhaupt, Staff Planner
Sonny Huh, Zoning Inspector, Zoning Administration and Enforcement Division
Project File
General File

JSH:KFW:vb

K:\WP_DOCS\PLANNING\SM1\1999\99sm121Olowalu\Review\Department Response to NOW Letter.DOC

JAMES "KIMO" APANA
Mayor

JOHN E. MIN
Director

CLAYTON I. YOSHIDA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

September 19, 2000

Mr. Robert Horcajo
Olowalu Elua Associates, LLC
173 Ho Ohana Street, Suite 201
Kahului, Hawaii 96732

Dear Mr. Horcajo:

RE: Special Management Area (SMA) Use Permit for the Proposed Olowalu Subdivision at TMK: 4-8-003:5, 10 (Por.), 41, 42, 43, 50 (Por.), 63 (Por.), and 78 (Por.) and 4-8-004:11, 12, 13, 14, 15, and 16 at Olowalu, Maui, Hawaii (SM1 990021) 4.760/4.758

At its regular meeting on September 12, 2000, the Maui Planning Commission (Commission) conducted a public hearing on the above-referenced application. At the meeting, the Commission clarified the record as follows:

1. Commissioner Star Medeiros who was a member of the Citizens Advisory Committee (CAC) for the West Maui Community Plan clarified the park designation and language. During the CAC's discussions on the park site at Olowalu, the reduction of 50 percent of agriculture related to the reduction of sugar cane cultivation and not to other agricultural crops that could be grown on the site. As such, the 50 percent reduction of agriculture has occurred. Based on the language, the applicant is advised that a 30-acre park should be reserved on the Camp Pecusa side of the makai lands in Olowalu.
2. Commissioner Joe Bertram III requested that the applicant work with Maui Electric Company to encourage energy efficiency in the project and use of alternative energy options such as solar panels.

The Commission, after due deliberation, voted to grant approval of the Special Management Area Use Permit, subject to the following conditions:

STANDARD CONDITIONS:

1. That construction of the proposed project shall be initiated by **September 30, 2002**. Initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply

within this two (2) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period. The Planning Director shall review and approve a time-extension request but may forward said request to the Maui Planning Commission for review and approval.

2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use Permit. A time extension shall be requested no later than ninety (90) days prior to the completion deadline. The Planning Director shall review and approve a time-extension request but may forward said request to the Maui Planning Commission for review and approval.
3. The permit holder or any aggrieved person may appeal to the Maui Planning Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
4. That final construction shall be in accordance with preliminary subdivision plans included in the submittal received on November 9, 1999.
5. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.
6. That the subject Special Management Area Use Permit shall not be transferred without prior written approval in accordance with Section 12-202-17(d) of the Special Management Area Rules of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Special Management Area Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
7. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Special Management Area Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Special Management Area Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County

of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the Planning Department within ninety (90) calendar days from the date of transmittal of the decision and order.

8. That full compliance with all applicable governmental requirements shall be rendered.
9. That the applicant shall submit plans regarding the location of any construction-related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Maui Planning Department for review and approval.
10. That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of a grading permit. A final compliance report shall be submitted thirty (30) days after the completion of the subdivision to the Planning Department for review and approval.
11. That the applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Special Management Area Use Permit. Failure to so develop the property may result in the revocation of the permit.

PROJECT SPECIFIC CONDITIONS:

12. That the applicant shall be responsible for all required infrastructural improvements including, but not limited to water source and system improvements for both domestic and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements, and utility upgrades. Said improvements shall be constructed concurrently with the development and shall be completed prior to final subdivision approval or bonded in accordance with Title 18, Maui County Code, relating to the subdivision ordinance.

13. That as represented by the applicant, an approximate 54-acre cultural reserve for historic and cultural preservation operated and managed by the Olowalu Cultural Reserve, a non-profit organization, shall be established in perpetuity to ensure preservation of historic and cultural resources, as well as to perpetuate the Hawaiian culture and continued access to Native Hawaiians to "gather", to perform religious practices, and to attend to their own kuleana. Access to the cultural reserve shall be open to the general public as a cultural reserve. Access for recreational purposes shall be as approved by the Olowalu Cultural Reserve (as amended).
14. As represented by the applicant, the roadways for the proposed subdivisions shall be constructed in substantial compliance with the proposed greenway plan identified in the application. For each phase of development, final plans for the applicable increments of the approximate sixty (60) acres of greenways shall be submitted to the Maui Planning Department for review and approval. Said greenway areas shall be regularly maintained and access to the greenways shall be open to the general public for access and recreational purposes (as amended).
15. That the applicant shall establish an irrigation system for the proposed agricultural subdivisions which addresses the supply, storage, and distribution of irrigation water to the proposed lots, and is secured in terms of permit acquisition, quality, quantity, availability, and year-round operations and maintenance. Documentation that the irrigation system has been established shall be submitted to the Maui Planning Department within ninety (90) days of construction of the subdivision.
16. That the applicant shall prepare a dust- and erosion-control plan for review and approval by the Maui Planning Department to ensure that any fallow agricultural lands do not create future adverse dust and erosion impacts on the surrounding area. Said plan shall be reviewed and approved by the appropriate State of Hawaii agencies and implemented as soon as practicable by the applicant and its assigns and successors. A copy of the approved dust- and erosion-control plan for the agricultural lands shall be submitted to the Maui Planning Department and the Department of Public Works and Waste Management for our records (as amended).
17. That potential buyers will be advised that the lots are for sale as commercial agricultural lots and of Hawaii's Right to Farm Act which prohibits conditions, covenants, and restrictions that will prevent or impede reasonable agricultural use of the lots.
18. That the Maui/Lanai Islands Burial Council shall review the mitigation proposals for all burials.

19. That the applicant shall submit a detailed preservation plan (scope of work) for the sites identified for preservation to the Department of Land and Natural Resources, State Historic Preservation Division (SHPD), for approval. This plan will include buffer zones, interim protection measures (as needed), and long-range preservation plans. No land alteration may occur in the vicinity of these sites until minimally the buffer zones and interim protection measures are approved and the SHPD verifies the interim protection measures are in place. No preservation activities may occur in these sites until the preservation plan is approved. The SHPD shall verify in writing to the County when the plan has been successfully executed.
20. That archaeological data recovery shall occur at the sites identified in the survey reports. The applicant shall submit an archaeological data recovery plan (scope of work) for these sites to the SHPD for approval. The SHPD shall verify in writing to the County when the plan has been successfully executed. Further, as noted, the gleyed marsh soils shall also undergo archaeological data recovery. Minimally, data recovery fieldwork must be successfully concluded (and verified in writing by SHPD) prior to land alteration in this part of the project area. The SHPD shall verify in writing to the permitting agencies when the plan has been successfully completed.
21. That archaeological monitoring of land-altering construction in the sand areas along the shore shall occur, as a contingency to identify, document, and treat any burials that might be found. A monitoring plan (scope of work) shall be submitted to and be approved by the SHPD prior to the beginning of the monitoring. This plan must specify how any burials that are found will be documented archaeologically, notification procedures, and treatment measures that will be taken. This scope should be completed before a monitoring contract is negotiated.
22. All preservation areas and buffer zones shall be clearly marked on the subdivision plans and recorded with the property documents to ensure that future owners of the lots are aware of these restrictions to the lots.
23. That as represented by the applicant, the oral history work shall be expanded to include more people of the Olowalu area, such as existing and former residents, persons who have knowledge of their ancestors living in the area, and the kupunas.
24. That adequate buffers between the cultural preserve areas and the agricultural lots shall be established to ensure that the cultural experience is not impacted by the agricultural use and structures on the adjoining lots. Mitigation measures from high boundary

- walls, residences, farm buildings, and operations shall be submitted to the Maui Planning Department for review and approval.
25. Unless removal is necessary for intersection improvements, to the extent practicable, the Monkey Pod trees within the subject property on both sides of Honoapiilani Highway shall be retained and consideration shall be given to extending the Monkey Pod trees as part of the cultural landscape (as amended).
 26. That structures located within the floodway Flood Zone A0 and A4 shall be constructed above the flood elevation. Measures such as post and pier construction shall be considered to conform to the Flood Hazard District and to allow flood waters to continue to traverse the property (as amended).
 27. That future buyers of lots shall be informed that development within flood hazard areas shall be implemented in accordance with Chapter 19.62, Maui County Code (as amended).
 28. That use of soil as fill is prohibited within the Shoreline Setback Area, except for clean sand. Further, any grading or mining of a coastal dune is prohibited.
 29. That a minimum shoreline setback of 150 ft. from the certified shoreline shall be established for all lots on the makai portion of the subdivision regardless of a government beach reserve fronting the subdivided lots. No structures shall encroach into the Shoreline Setback Area to ensure that future shoreline erosion and storm-wave action will not adversely affect structural development on the properties.
 30. That public lateral pedestrian access along the shoreline within the Shoreline Setback Area shall be provided. Landscaping in the area within 50 ft. of the shoreline should be spaced far enough apart so as not to interfere with lateral access. Further, as represented by the applicant, mauka/makai public shoreline access from Honoapiilani Highway and public beach parking shall be provided near the Olowalu Mill site to Olowalu Landing, as well as access points to the shoreline from both ends of the makai Olowalu lands. Documentation that access, as required, has been provided shall be filed with the Departments of Public Works and Waste Management, Parks and Recreation, and Planning prior to final subdivision approval (as amended).
 31. As represented by the applicant, the existing cane haul road (approximately 80 ft. wide) on the mauka side of Honoapiilani Highway shall be set aside as a reserve (Roadway Lot 39) for

future roadway expansion or relocation of Honoapiilani Highway (as amended).

32. That roadway improvements to Honoapiilani Highway, including left-turn storage lanes, acceleration and deceleration lanes, driveway connections, etc., as identified in the applicant's Traffic Impact Assessment Report (TIAR), and as required by the Department of Transportation shall be provided in conjunction with the development of the subdivision. The roadway improvements shall be reviewed and approved by the Department of Transportation. Construction of the improvements shall be completed prior to occupancy of the agricultural lots unless a phasing plan for the improvements is reviewed and approved by the Department of Transportation.
33. That the outdoor lighting plans for the subdivision shall be submitted to the Maui Planning Department for review and approval to reduce the negative impacts on seabirds, especially the dark-rumped petrel (*Pterodroma phaeopygia sandwichensis*) which is a federally endangered species. All potential owners of the lots shall be informed that appropriate measures approved by the Maui Planning Department shall be taken to reduce the negative impacts of night lights (as amended).
34. That future buyers of the lots shall be informed that there may be potential waste from the old mill site (Olowalu Mill) and other vacated agricultural industrial areas. Remedial cleanup must be conducted before any new development occurs.
35. That future buyers of the lots shall be informed of the survey monuments located within the boundaries of their lots which need to be protected from any development activities. Further, in the event the survey monuments are disturbed or destroyed during development of the subdivision or properties, it will be the responsibility of the applicant, assigns or successors to reference and replace the monuments.
36. That Condition Nos. 16, 17, 21, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35 shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances within sixty (60) days from the date of receipt of this decision. A copy of the recorded unilateral agreement shall be filed with the Planning Director and the Director of the Department of Public Works and Waste Management within ten (10) days of recordation.

The conditions of this Special Management Area Use Permit shall be enforced pursuant to Sections 12-202-23 and 12-202-25 of the Special Management Area Rules for the Maui Planning Commission.

Mr. Robert Horcajo
September 19, 2000
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Further, the Commission adopted as its Findings of Fact, Conclusions of Law, Decision and Order the Planning Department's Report and Recommendation Report prepared for the September 12, 2000 meeting and authorized the Planning Director to transmit said Decision and Order for the Commission.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN
Planning Director

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Project File
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