Harry Kim
Mayor

County of Hawaii

PLANNING COMMISSION
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CERTIFIED MAIL
7099 3220 0002 3094 9021

MAY 22 2001

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit No. 863 (SPP 863)
Request: Amendment to Condition No. 3 (Commence and Complete Construction)
Use Permit No. 74 (USE 74)
Request: Amendment to Condition No. 4 (Commence and Complete Construction)
Applicant: Big Island Country Club & Estates
Tax Map Key: 7-1-5:9, 10, 22, 26, 28, 34, 39-41, 58 & 59

The Planning Commission at its duly held public hearing on May 4, 2001, voted to approve the above-referenced requests for an amendment to Condition No. 4 (complete construction of community park, recreational center and fire station facilities) of Use Permit No. 74, which allowed the establishment of a 27-hole golf course and related improvements; and Condition No. 3 (commence and complete construction of community park, recreational center and fire station facilities) of Special Permit No. 863, which allowed the establishment of an expanded use of the golf clubhouse and construction of additional recreational facilities (tennis court/pool/etc.), community park and volunteer fire facility. The property is located on the northwest (makai) side of Mamalahoa Highway opposite the Puu Lani Ranch Subdivision at Pu'uanahulu Homesteads, North Kona, Hawaii.

Approval of these requests are based on the following:

Use Permit

Use Permit No. 74 was approved by the Planning Commission on March 13, 1990 and amended on April 1, 1999, March 3, 2000, and July 7, 2000, subject in part, to the following Condition No. 4(b) and 4(d):

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"To ensure that the goals and policies of the recreational element of the General Plan are implemented as proposed, the Department of Parks and Recreation, upon consultation with the County Council, and with the concurrence of the Planning Department, may require the provision of public recreational facilities and/or improvements within the project area or the affected districts as appropriate. The recreational needs determination, shall be as follows:

(b) as represented by and committed to by the applicant, the construction of the community park and community recreational center shall commence no later than December 1, 2000 and be completed by no later than March 1, 2001, and the construction of the volunteer fire station shall commence no later than March 1, 2001 and be completed no later than July 1, 2001.

(d) The golf course or any related facilities thereto may continue to remain open. Should any of the above conditions and improvements not be completed by March 1, 2001 for the community park and community recreational center, and not be completed by July 1, 2001 for the volunteer fire station, the Planning Director shall close the golf course until said conditions and improvements have been completed."

Approval of this request would not be contrary to the General Plan or the Zoning Code. The proposed use will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan. The establishment of a 27-hole golf course and related improvements are permitted within the State Land Use Agricultural District; and within the County's Agricultural-1 acre zoned district, they may be permitted through the Use Permit review process. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses as well as the General Plan goals and policies. The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the location and use of buildings, off-street parking, the percentage of lots that may be occupied, the density of population and land for trade, industry, residence or other purposes.

The amendment to Condition No. 4(b) and 4(d) would not be contrary to the original reasons for granting the Use Permit. The applicant completed construction plans for the community center, secured plan approval and submitted a building permit application for the recreational center last year. Willocks Construction Corporation was selected through a bidding process to construct the recreational center and complete the site work for the park. Shinsato Engineering, Inc. has been retained to provide a soils report and supervise the required grading of the park and pads for the structures to assure

conformity to applicable regulations and standards. Grading plans for the park and recreational center have been prepared and a grading permit was issued on November 21, 2000. The firm of George M. Oye, Inc. was selected to implement the grading permit and work started on December 1, 2000. The architect is presently working on the construction plans for the volunteer fire station. The applicant has shared the general floor plan and site plan with the Puuanahulu Community Association, which has found it to be generally acceptable. The Puuanahulu Community Association must still coordinate its efforts with the County Fire Department regarding training and other requirements to establish a volunteer fire station. At present, it is not known how long this will take. Relative to Condition No. 4 contained in Use Permit No. 74, the applicant anticipates that an additional nine (9) months are necessary for completion of the community center and park, an additional six (6) months are necessary to commence construction of the volunteer fire station, and an additional seven (7) months necessary for completion of the volunteer fire station. Accordingly, the applicant states that construction of the community center will be completed no later than November 30, 2001; and construction of the volunteer fire station will begin no later than September 1, 2001 and completed no later than February 1, 2002. The applicant has also requested a provision whereby the Planning Director could grant an additional maximum six (6) month time extension provided that an agreement and appropriate surety are executed to assure the completion of the required improvements within the period requested. This provision would provide assurance to a prospective investor and/or buyer, should delays occur which prevent the applicant from completing the required improvements by the dates specified in the development entitlements.

In support of the request, the applicant states, "The applicant believed that the park could be completed by March 1, 2001 when the third amendment was granted in July 2000. At that time, preliminary architectural plans were already done, and it was felt that the plans could be easily finalized and the required permits secured before November. Unfortunately, many unanticipated issues cropped up. Among others, these included the need for a more detailed survey, preparation of a grading plan, and resolution of basic infrastructure (such as the access approval, wastewater system, and the potable water system). The time needed to coordinate this permitting phase of the project was unanticipated. Adding to this delay was the unanticipated time required to find a person to assist with the coordination and management of the bidding process; and finally, with certain aspects of the construction phase."

The inability of the applicant to comply with the requirements of Condition No. 4(b) and 4(d) of Use Permit No. 74 are the result of conditions which could not have been foreseen or are beyond the control of the applicant. Delays experienced in the process of planning and constructing the required facilities and implementing the associated infrastructure improvements are the result of conditions which could not have been foreseen and are not the result of their fault or negligence.

Approval of this amendment request would not be contrary to the original reasons for granting the use permit. The applicant has continually worked to secure the necessary approvals from the various departments for the required improvements within and beyond the boundaries of the project site. Over the years, the applicant has shown perseverance in managing the many requirements which they have had to deal with. The applicant secured Final Subdivision Approval on January 18, 2000 for the Pu'uanahulu community park site. Subsequently on April 20, 2000, the applicant conveyed the Warranty Deed for said park site to the Pu'uanahulu Community Association, as required by condition of approval. The applicant has either complied with, or initiated the process of compliance with other conditions of approval within the subject use permit. Further, it should be pointed out that the applicant has also extended its commitment to the community by involving the residents in the area with job opportunities and training at the project site.

Therefore, an approval of the amendment request to Condition No. 4 (b) and 4(d) will be consistent with the original reasons for granting the Use Permit.

Based on the above considerations, the request for an amendment to the recreational impact requirement is hereby granted subject to the following revised changes (Material to be deleted is bracketed and material to be added is underscored):

1. The applicant, successors, or assigns shall comply with all of the stated conditions of approval, provided that this Use Permit and all rights conveyed therefrom shall not be wholly transferable or assignable without prior notification to the Planning Commission.

2. Final Plan Approval for the proposed golf course and related improvements shall be secured from the Planning Department within one year from the effective date of the permit. Prior to the submittal of said plans, the applicant shall solicit the input of the immediately impacted residents. 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 (45) days prior to the date by which Plan Approval must be secured. The Planning Department shall determine the related improvements and accessory uses to the golf course not inconsistent with the applicable provisions of the Zoning Code at the time of Plan Approval review.

3. Construction of the golf course and related improvements shall commence within one year from the date of receipt of Final Plan Approval and be completed within three (3) years thereafter.

4. To ensure that the goals and policies of the recreational element of the General Plan are implemented as proposed, the Department of Parks and Recreation, upon

consultation with the County Council, and with the concurrence of the Planning Department, may require the provision of public recreational facilities and/or improvements within the project area or the affected districts as appropriate. The recreational needs determination shall be as follows:

(a) Subdivide and convey in fee, approximately 10 + acres of land within the project site, to the Pu'uanahulu Community Association or its designee for development as a community park, within four (4) months from the effective date of this amendment. The applicant shall be responsible for payment of the park's real property taxes and liability insurance for a two year period [after its conveyance to the Pu'uanahulu Community Association] from the effective date of this amendment.

(b) [as] As represented by and committed to by the applicant, the construction of the community park and community recreational center shall commence no later than December 1, 2000 and be completed no later than [March 1] November 30, 2001, and the construction of the volunteer fire station shall commence no later than [March] September 1, 2001 and be completed no later than [July 1, 2001] February 1, 2002. A maximum six (6) month time extension for completion of the required improvements may be granted by the Planning Director provided that an agreement is entered into between the Planning Director and the applicant, its assigns or successors, accompanied by a surety bond (other than personal surety), certified check or other security acceptable to the Director, in the sum equal to the cost of all the work required to complete the required improvements within the extended period.

(c) The balance (i.e., the difference between the cost of the community park and $3 million) would be paid to the County within a year after completion of the park. In determining the balance, the developer shall submit documents (such as building permit valuation, estimates from contractor's, estimates from architects and/or engineers of record, and the like) to help determine the cost of this project.

(d) The golf course or any related facilities thereto may continue to remain open.

Should any of the above conditions and improvements not be completed by [March 1] November 30, 2001 for the community park and community recreational center, and not be completed by [July 1, 2001] February 1, 2002 for the volunteer fire station, the Planning Director shall close the golf course until said conditions and improvements have been completed.

5. In the design of the golf course, the County of Hawaii Planning Department's Guidelines for Golf Course Design (November 1989, as amended) shall be utilized. The Planning Department shall determine appropriate setback requirements, e.g. building and property line, at the time of Plan Approval review. Easements for golf course purposes over and across abutting lots, either existing or proposed, shall not be permissible. Existing public rights-of-way shall not be extinguished in favor of golf course purposes unless other equitable public rights of access are provided for.

6. All structures shall be sited to minimize any potential visual impact to the highway and surrounding areas.

7. No individual fee interest, ownership, or title to any portion of the golf course shall be permitted without prior compliance with the Subdivision Code. Covenants or other assurances to prospective purchasers of membership(s) in the golf course, its facilities, or related developments shall include notification that a public landfill facility and rifle range are planned for the adjacent area.

8. An intensive archaeological and cultural interpretative survey shall be conducted and a report be submitted to the State Department of Land and Natural Resources, Historic Sites Program, and the Planning Department for review prior to receipt of Final Plan Approval and/or prior to the issuance of any grading or grubbing permit, whichever occurs first. Should any significant sites be found, a data recovery plan outlining appropriate mitigation measures shall be submitted to both agencies for review and approval.

9. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the State Department of Land and Natural Resources, Historic Sites Program, notified. No work within the affected area shall resume until clearance is obtained from the Planning Department based upon recommendations from the Historic Sites Program.

10. A complete biological survey shall be conducted and a recommended mitigation plan, if necessary, shall be submitted for review and approval by the U.S. Fish and Wildlife Service and the State Department of Land and Natural Resources prior to issuance of any land development permit for the property.

11. The use of pesticides and herbicides in conjunction with all phases of operation shall conform with the applicable regulations of appropriate governmental agencies.

12. During construction, best effort measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such best effort measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.

13. Prior to construction, the applicant shall demonstrate to the satisfaction of the Planning Director that all proposed off-site construction material such as topsoil or sand are being supplied from an approved quarry or resource site.

14. Access(es) to the proposed development from Mamalahoa Highway, including channelized intersection improvements with left turn storage lanes and acceleration and decelerations lanes, shall meet with the approval of the State Department of Transportation, Highways Division.

15. All interior roadways shall be constructed to County dedicable standards. Public access to the makai State lands shall be provided for hunting and other recreational uses meeting with the approval of the Department of Land and Natural Resources, Wildlife Division.

16. The applicant shall provide adequate water service and back-up facilities or assurances to meet the demands for fire protection and all domestic related facilities prior to the issuance of any occupancy permit.

17. An annual progress report shall be submitted to the Planning Department prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. 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.

18. Should the applicant require any further amendments or if conditions of approval are not complied with, Use Permit No. 74 shall be forwarded to the Planning Commission for reconsideration.

Special Permit

Approval of this request would not be contrary to the General Plan or the Zoning Code nor the original reasons for the granting of Special Permit No. 863. The request for an extension of time to open the facilities would not be contrary to the General Plan or the Zoning Code. The applicant completed construction plans for the community center, secured plan approval and submitted a building permit application for the recreational

center last year. Willocks Construction Corporation was selected through a bidding process to construct the recreational center and complete the site work for the park. Shinsato Engineering, Inc. has been retained to provide a soils report and supervise the required grading of the park and pads for the structures to assure conformity to applicable regulations and standards. Grading plans for the park and recreational center have been prepared and a grading permit was issued on November 21, 2000. The firm of George M. Oye, Inc. was selected to implement the grading permit and work started on December 1, 2000. The architect is presently working on the construction plans for the volunteer fire station. The applicant has shared the general floor plan and site plan with the Puuanahulu Community Association, which has found it to be generally acceptable. The Puuanahulu Community Association must still coordinate its efforts with the County Fire Department regarding training and other requirements to establish a volunteer fire station. At present, it is not known how long this will take. Relative to Condition No. 3 of Special Permit No. 863, the applicant anticipates that an additional nine (9) months are necessary for completion of the community center and park, an additional six (6) months are necessary to commence construction of the volunteer fire station, and an additional seven (7) months necessary for completion of the volunteer fire station. Accordingly, the applicant states that construction of the community center will be completed no later than November 30, 2001; and construction of the volunteer fire station will begin no later than September 1, 2001 and completed no later than February 1, 2002. The applicant has also requested a provision whereby the Planning Director could grant an additional maximum six (6) month time extension provided that an agreement and appropriate surety are executed to assure the completion of the required improvements within the period requested. This provision would provide assurance to a prospective investor and/or buyer should delays occur which prevent the applicant from completing the required improvements by the dates specified in the development entitlements.

In support of the request, the applicant states, "The applicant believed that the park could be completed by March 1, 2001 when the third amendment was granted in July 2000. At that time, preliminary architectural plans were already done, and it was felt that the plans could be easily finalized and the required permits secured before November. Unfortunately, many unanticipated issues cropped up. Among others, these included the need for a more detailed survey, preparation of a grading plan, and resolution of basic infrastructure (such as the access approval, wastewater system, and the potable water system). The time needed to coordinate this permitting phase of the project was unanticipated. Adding to this delay was the unanticipated time required to find a person to assist with the coordination and management of the bidding process; and finally, with certain aspects of the construction phase."

Approval of this amendment request would not be contrary to the original reasons for granting the special permit. The applicant has continually worked to secure the necessary approvals from the various departments for the required improvements within

and beyond the boundaries of the project site. Over the years, the applicant has shown perseverance in managing the many requirements which they have had to deal with. The applicant secured Final Subdivision Approval on January 18, 2000 for the Pu'uanahulu community park site. Subsequently on April 20, 2000, the applicant conveyed the Warranty Deed for said park site to the Pu'uanahulu Community Association, as required by condition of approval. The applicant has either complied with, or initiated the process of compliance with other conditions of approval within the subject special permit. Further, it should be pointed out that the applicant has also extended its commitment to the community by involving the residents in the area with job opportunities and training at the project site.

The desired use will not adversely affect the surrounding properties. The surrounding areas include residential and agricultural uses as well as vacant lands. The expanded use of the golf clubhouse facilities and the construction of a recreational center complex would further the attractiveness of the golf course by providing amenities to its members and to the surrounding community.

Therefore, an approval of the request will be consistent with the original reasons for granting the Special Permit.

Based on the above considerations, the request for an amendment to open the facilities as required by Condition No. 3 is hereby granted subject to the following revised changes (Material to be deleted is bracketed and material to be added is underscored):

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. Final Plan Approval for the expanded golf clubhouse uses, recreation center, community recreation center, community recreation center and volunteer fire station shall be secured from the Planning Department. Plans shall identify all existing and proposed structures, landscaping, fire protection measures, paved parking stalls and paved driveway and access roadways associated with the proposed uses. Parking shall comply with the requirements of Chapter 25 (Zoning Code). Parking for all functions shall be maintained within the project sites. Plans for the community park site and the community recreation center and volunteer fire station shall indicate appropriate landscaping for the purpose of mitigating any visual and noise impacts which may be generated by the facilities. A 10-foot wide no-vehicular access planting screen easement shall be delineated along the project site's entire Mamalahoa Highway frontage, exclusive of access points and reflected on all plans submitted for Final Plan Approval review.

3. The expanded use of clubhouse facilities and the construction of the recreation center[, and the community recreation center] shall commence no later than December 1, 2000 and be completed no later than [March 1], November 30, 2001, and the construction of the volunteer fire station shall commence no later than [March] September 1, 2001 and be completed no later than [July 1, 2001] February 1, 2002. A maximum six (6) month time extension for completion of the required improvements may be granted by the Planning Director provided that an agreement is entered into between the Planning Director and the applicant, its assigns or successors, accompanied by a surety bond (other than personal surety), certified check or other security acceptable to the Director, in the sum equal to the cost of all the work required to complete the required improvements within the extended period.

4. Access(es) to the project site shall be constructed in a manner meeting with the approval of the Departments of Transportation-Highways Division and/or Public Works, whichever is applicable. The proposed main project access roadway intersection with the Mamalahoa Highway shall be channelized with a left turn storage lane which shall be completed prior to the issuance of a certificate of occupancy for the proposed facilities.

5. The applicant shall provide adequate potable water service and back-up facilities or assurances to meet the demands for fire protection and the proposed uses prior to the issuance of a certificate of occupancy for the proposed uses.

6. A final archaeological inventory survey and mitigation plan shall be prepared and submitted for approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division, prior to submittal of plans for Plan Approval review. The Plan shall consist of two subplans; (1) an archaeological data recovery plan for the sites to undergo data recovery, and (2) a detailed preservation/interpretation plan for the sites to undergo preservation. The preservation/interpretation plan shall include buffer zones, signage, interim protection measures, and long-range preservation concerns. The Plan shall also detail measures to provide unrestricted assess to all individuals wishing to visit any burial sites which may be located within the project site. Proposed mitigation treatment (preservation in place or disinternment/reinternment) for burial sites must be approved by the Historic Preservation Division's Hawaii Island Burial Council before detailed mitigation plans are finalized for these sites. The Planning Department and the State of Hawaii's Historic Preservation Division shall verify in writing the successful execution of the plan, prior to land altering activities in the area of historic sites.

7. 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.

8. Use of the clubhouse, recreation center facilities and related facilities beyond the regular golf course operational hours shall be limited to no later than 10:00 p.m. during the weekdays and 12:00 a.m. during the weekends.

9. The applicant shall comply with all other laws, rules, regulations and requirements, including those of the Department of Health and Fire Department.

10. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. 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.

11. Should the applicant require any further amendments or if conditions of approval are not complied with, Special Permit No. 863 shall be forwarded to the Planning Commission for reconsideration.

These approvals do not, however, sanction the specific plans submitted with the applications as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Daryn Arai of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,

Geraldine M. Giffin

Geraldine M. Giffin, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Brian Minaai, Director/DOT-Highways, Honolulu