

PLANNING COMMISSION

Planning Department  
County of Hawaii  
Hilo, Hawaii

Application for )  
SPECIAL MANAGEMENT AREA )  
USE PERMIT )  
by )  
PACIFIC WAREHOUSE, INC. ) SMA USE PERMIT NO. 51  
for )  
A RETAIL FOOD MARKET & )  
RELATED IMPROVEMENTS )  
in )  
Kailua Village, Keopu 3rd, )  
North Kona, Hawaii )  
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SPECIAL MANAGEMENT AREA USE PERMIT

The County Planning Commission at a duly held public hearing on January 31, 1978, considered the application of PACIFIC WAREHOUSE, INC. for a Special Management Area Use Permit in accordance with Rule No. 9, Rules and Regulations Relating to Environmental Shoreline Protection, to allow the establishment of a retail food market and related improvements, including parking and landscaping in Kailua Village, Keopu 3rd, North Kona, Hawaii, Tax Map Key 7-5-07:33 through 50.

The Commission has found:

That the approval of the proposed project will not result in the loss of valuable natural, cultural, or recreational resources of the coastal zone. No rare native or endemic plants and/or animal species inhabit the site. Similarly, no objects of cultural or archaeological significance are known to exist on the property. In addition, due to its location approximately 650 feet from the shoreline, and the fact that the intervening urban area is densely built up, the proposed single story structure will not significantly obstruct the existing line of sight towards the ocean from the nearest highway. Also, the property slopes makai from Kuakini Highway. The parking area along Kuakini Highway will be below the roadway grade and is not expected to be visually obtrusive. A landscaping strip along the roadway and the use of canopy trees within the parking area will further reduce the visual impact of the parking. Neither will the proposal remove or impose restrictions on existing access routes to the beaches or shoreline recreational areas.

Likewise, no adverse impacts on air and water quality are anticipated since no food processing and subsequent discharge of processing wastes are involved in the retail market operation. The existing County sewerage system could, therefore, accommodate expected wasteloads.

Negative impacts on the local water quality resulting from soil erosion and runoff during the site preparation and construction phases should be adequately mitigated through compliance with existing ordinances.

In addition, the granting of the subject request will not be detrimental to the Special Management Area in that it will not result in the foreclosure of management options. Since Kailua is already urbanized, the proposed use will contribute to the functioning of the area. The location of the proposed use is such that both vehicular and pedestrian traffic will have easy access to it. It is expected that the proposed use will service both the visitor and the permanent resident population. Further, the provision of twenty (20) parking spaces for the general public will enhance the economic development of Kailua while providing partial solution of the parking problems in the area.

Based on the above, it has been determined that the proposed development is not in conflict with the objectives and policies of the Environmental Shoreline Protection Act (Act 176, S.L.H., 1975), Rule 9 of the Planning Commission, or the Hawaii Coastal Zone Management Act (Act 188, S.L.H., 1977), nor is it contrary to any other County or State long-term land use or environmental goals or policies.

Therefore, the Commission hereby grants to the petitioner a Special Management Area Use Permit to allow the establishment of a retail food market and related improvements, including parking and landscaping pursuant to the authority vested in it by Rule No. 9, Rules and Regulations Relating to Environmental Shoreline Protection, subject to the following conditions:

1. That the petitioner or its authorized representative shall consolidate parcels 33 through 40 of tax map key 7-5-07 within 6 months of the effective date of approval of the Special Management Area Use Permit.
2. That the petitioner or its authorized representative shall submit plans for plan approval within one year from the effective date of approval of the SMA Use Permit.
3. That the petitioner shall submit a landscaping plan to the Kailua Village District Commission for its review and recommendation to the Planning Director for his review and approval. Said plan shall include a 10-foot wide landscaping buffer along Kuakini Highway as well as the use of canopy trees within the mauka parking area.
4. That the proposed improvements shall conform substantially to the plans submitted and the representations made by the petitioner. The plans shall include the resiting of the building further mauka towards Kuakini Highway to enable the placement of another tier of parking on the makai side of the subject property.
5. That construction of the proposed improvements shall commence within one (1) year from the receipt of final plan approval and shall be completed within two (2) years thereafter.

6. That the petitioner shall obtain a Grading Permit from the County of Hawaii Department of Public Works and shall comply with all other conditions which may be imposed by the Chief Engineer.
7. That the parking stalls on the makai side of the proposed building shall be clearly identified as being for public use.
8. That the petitioner shall immediately notify the State Historic Preservation Officer and the Planning Director should any objects of archaeological significance be found during the site preparation.
9. That all other applicable rules, regulations, and requirements, including the Plan Approval process, shall be complied with.
10. That the petitioner shall be responsible for widening Hanama Place with a 20-foot pavement meeting the approval of the Chief Engineer between Kuakini Highway and the makai edge of the subject property prior to the issuance of the occupancy permit for the proposed building.
11. That the petitioner shall submit plans dealing with the design of the makai and south side of the proposed building to the Kailua Village District Commission for its review and recommendation to the Planning Director.

Should these conditions not be met, the Special Management Area Use Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be January 31, 1978.

Dated at Hilo, Hawaii, this 9<sup>th</sup> day of March, 1978.



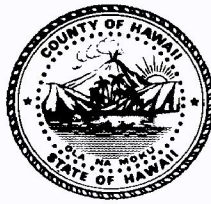
William F. Mielcke, Chairman  
Planning Commission

ASSISTANT

<p>APPROVED as to FORM and LEGALITY</p> <p><i>Roxanna Garcia</i></p> <p>CORPORATE SECRETARY COUNTY OF HAWAII</p> <p>Date FEB 28 1978</p>
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Mitchell D. Roth  
*Mayor*

Lee E. Lord  
*Managing Director*



Barbara DeFranco, Chair  
Zaheva Knowles, Vice Chair  
Michael Dela Cruz  
Clement "CJ" Kanuha III  
Mahina Paishon-Duarte  
Michael Vitousek

## County of Hawai'i

### LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

May 12, 2023

Mr. Sidney Fuke  
Planning Consultant  
P.O. Box 1345  
Hilo, HI 96721  
VIA EMAIL

Dear Mr. Fuke:

**SUBJECT: Special Management Area Use Permit Application (PL-SMA-2023-000027)  
Amendment to Special Management Area Use Permit No. 51  
Applicant: D&L Fujimoto, LLC  
Request: Amendment to Condition No. 7 (Public Parking Requirement) to  
Clarify the Management and Use of Public Parking Stalls  
Tax Map Key: (3) 7-5-007:033; North Kona, Hawai'i**

The Leeward Planning Commission, at its duly held public hearing on April 20, 2023, voted to approve the above-referenced application to amend Condition No. 7 (public parking requirement) of Special Management Area Use Permit No. 51 to clarify the management and use of twenty (20) public parking stalls located on a 1.468-acre parcel situated within the Special Management Area. The subject property is located makai of Kuakini Highway, along the south side of Hanama Place, in Kailua Village, at 75-5722 Hanama Place, Keōpū 3rd, North Kona District, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant, successors, assigns ("Applicant") shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
2. The Applicant shall continue to comply with all applicable recommendations and requirements outlined in the approved landscaping plan.
3. As represented by the Applicant, the parking stalls on the makai side of the existing building shall be clearly identified as being for general public use. A parking management plan, which may include reasonable fees to address public safety, enforcement, and its maintenance, shall be submitted to the Planning Director for review and approval.

Mr. Sidney Fuke  
Planning Consultant  
May 12, 2023  
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*[Note: Ramseyer version available upon request.]*

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Alex Roy of the Planning Department at (808) 961-8140 or by email at [Alex.Roy@hawaiicounty.gov](mailto:Alex.Roy@hawaiicounty.gov).

Sincerely,

*Barbara DeFranco*

[Barbara DeFranco \(May 12, 2023 13:35 HST\)](#)

Barbara DeFranco, Chairperson  
Leeward Planning Commission

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Attachment: Planning Commission Findings

cc via email w/att.: Mr. Darryl Fujimoto, D&L Fujimoto, LLC  
Planning Department GIS Section

**COUNTY OF HAWAI‘I PLANNING DEPARTMENT**  
**PLANNING COMMISSION FINDINGS**

**D&L FUJIMOTO LLC**  
**SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION**  
**(PL-SMA-2023-000027)**

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At the Planning Commission meeting on April 20, 2023, the Leeward Planning Commission voted to approve the subject Special Management Area Use Permit No. PL-SMA-2023-000027 with the addition of two (2) new conditions, No. 2 to ensure compliance with landscaping improvements, and No. 3, that the applicant will submit for approval a parking management plan. Based on the following findings Special Management Area Use Permit No. PL-SMA-2023-000027 is hereby approved to delete Condition No. 7 (public parking requirement) of Special Management Area (SMA) Use Permit No. 51 (SMA 51) to clarify the management and use of twenty (20) public parking stalls located on a 1.468-acre parcel situated within the Special Management Area (SMA). The subject property is located makai of Kuakini Highway, along the south side of Hanama Place, in Kailua Village, at 75-5722 Hanama Place, Keōpū 3rd, North Kona District, Hawai‘i, TMK: (3) 7-5-007:033.

D&L Fujimoto LLC (Applicant) seeks approval to delete condition No. 7 (public parking requirement) of SMA 51 in order to exercise reasonable controls over the “public use” parking area on its property. Condition No. 7 of SMA 51 designated twenty (20) parking stalls on the makai side of the proposed building for public use without any restrictions or controls. The existing building located on the subject parcel houses a variety of uses consistent with the site’s resort zoning (V-.75) and the parking stalls designated under SMA No. 51 have continued to be set aside for the public. However, there has been ongoing abuse of the unlimited free public parking which is counter to the intent of the parking area and the safety of the public as there are no restrictions on these twenty (20) parking stalls. The condition on the SMA Use Permit was a requirement for approval, however, parking is not one of the SMA policies, objectives, or guidelines that are considered unless it is connected to shoreline access, which this site is not. As noted in the *Topliss v. Hawaii* County Planning Commission decision, the Commission’s actions (including conditions) must have a reasonable relationship to the SMA objectives and policies. The Intermediate Court of Appeals in 1993 in that case opined that “*if traffic from a development within an SMA is not shown to have a substantial adverse effect on the coastal environment, such impact as the traffic may otherwise have on the existing roadway system in the area of the development cannot be the basis for denying an SMA application.*” Under this proposed amendment the applicant will continue to provide some form of public parking on the subject parcel, but with adequate controls and restrictions to ensure that the use is not abused, and the parking area can be managed properly for safety and security.

The grounds for approving development within the Special Management Area are based on HRS, Chapter 205A-26(2) (Special Management Area guidelines) and Rule 9-11(e) of the Planning Commission Rules of Practice and Procedure. Planning

Commission Rule 9-11(e) states that the Authority (Planning Commission) may permit the proposed development only upon finding that:

1. The development will not have any substantial adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest.
2. The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS.
3. The development is consistent with the General Plan, Community Plan, Zoning Code and other applicable ordinances.
4. The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
  - a. The identity and scope of valued cultural historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area.
  - b. The extent to which those resources including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
  - c. The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical, or natural resources including any existing traditional and customary native Hawai'i rights.

**In review of the SMA guidelines as listed under HRS 205A-26(2)(A), the proposed development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.**

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action on the Special Management Area. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and eliminate planning options.

The proposed amendment to Condition No. 7 of SMA No. 51 will not adversely affect the quality of the environment but may enhance it. At times, long term public parking at this site has permitted the accumulation of trash and other hazardous materials to accumulate which could be considered a cumulative effect on the environment. Allowing for consistent management could help to alleviate that and provide a relatively safe and clean parking area.

The subject parcel has been used as a parking area since the original development was approved in the 1970s. This proposed amendment to the SMA permit will continue the use as a public parking area, but with the ability for the applicant to manage the site as needed.

In reviewing the proposed development against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1-10), it has been determined that the proposed request to amend SMA 51 Condition No. 7 will not have a significant adverse environmental or ecological effect upon the Special Management Area. This determination is based on the following:

**In review of the SMA guidelines as listed under HRS 205A-26, the proposed development is consistent with the objectives and policies as provided by Chapter 205A-26, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.**

The purpose of Chapter 205A-26, Hawai'i Revised Statutes (HRS) and Rule 9 of the Planning Commission Rules of Practice and Procedure, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options. The objectives and policies of Chapter 205A-26, HRS and Rule 9-10(h) include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas.

This proposed action is not contrary to the objectives and policies related to development within the Special Management Area. Parking, unless specifically tied to a shoreline public access path or easement, is not typically within the purview of Rule 9 of the Planning Commission Rules and Regulations. With regard to parking, rules related to parking requirements are more appropriately applied via the Zoning Code which does not prohibit reasonable controls on parking, even if required. However, to review this request under SMA objectives and policies the Director has determined that the request will aim to restore and protect the natural resources of the area by allowing the Applicant the ability to effectively manage a heavily used public site.

**The proposed development is consistent with the County General Plan, Kona Community Development Plan (KCDP), Kailua Village Design Plan, Zoning Code, and other applicable ordinances.**

The subject parcel is zoned Resort-Hotel (V-.75), and as such the principal use of the site is permitted by the zoning code. This proposed request is to amend the terms of the parking area that already exists and will remain for the public under appropriate management. Staff notes that in 1976, the Kailua Village Design Plan was adopted by the County Council (Ordinance No. 217). The purpose of the plan was to *"further clarify the General Plan policies and to establish a more detailed program for implementing the General Plan within the Kailua Village area."* When SMA 51 was being finalized, the Planning Department stated that *"a portion of the subject property has been designated for public parking by the Kailua Village Design Plan (Ordinance No. 217). The County, however, has no available funds to acquire the property for such purposes."* Additionally, the County stated that *"upon review of the original plans, the petitioner was required by the Planning Department to decrease the retail area of the proposed market by 1,972 sf and to provide twenty (20) parking stalls for public use."* Staff notes that according to previous Planning Department determinations these 20 parking stalls for public use were considered extra, and not as a requirement for plan approval.

**The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist.** In view of the Hawai'i State Supreme Court's "PASH" and "Ka Pa'akai O Ka'Aina" decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.



Investigation of valued resources: The applicant notes that the subject parcel and surrounding area is fully developed, and as such, no archeological features or cultural resources would be found on the project site.

The valuable cultural, historical, and natural resources found in the area: Based on the long development history of the subject parcel is highly unlikely that any historic sites would be found on the property. The parking area is within the Kailua Village core and is approximately 650-feet from the shoreline and ocean. The proposed request will not alter or change the current level of access the public utilizes to visit the shoreline and nearby Hulihe'e Palace.

Possible adverse effects or impairment of valued resources: No floral or faunal species listed as threatened, endangered, or proposed for listing under the federal or state endangered species statutes were identified on the site. Additionally, no species used for cultural gathering purposes were identified within the boundaries of the subject parcel. The urban nature of the parcel and surrounding areas would make it less likely to find other protected or endangered animal life in this area.

Feasible actions to protect native Hawaiian rights: Other than the use of the public parking area by native Hawaiians to visit Hulihe'e Palace and the Kailua Village, this proposed amendment will not have any impact on native Hawaiian rights and therefore no feasible actions need to be taken to protect those rights. This proposed request will not impact shoreline access or access to nearby archeological sites along the coast.

Lastly, this recommendation for approval is made with the understanding that the Applicant remains responsible for complying with all other applicable government requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, compliance with Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, the proposed amendment to an approved SMA Use Permit (SMA 51) will not have substantial adverse impacts on the environment, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.