



County of Hawai'i

WINDWARD PLANNING COMMISSION

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

JAN 21 2014

Mr. David S. De Luz, Jr.
811 Kanoiehua Avenue
Hilo, HI 96720

Dear Mr. De Luz:

Special Management Area Use Permit (SMA 09-000033)

Applicant: Ho'oluana Place, LLC

Tax Map Key: 2-2-030:017 and 019

The Windward Planning Commission at its duly held public hearing on January 9, 2014, approved your request for the revocation of SMA No. 09-000033, which allowed the development of a family entertainment center and retail complex to include a bowling alley, restaurants, sports bar, butcher shop, retail shops and related improvements. The property is located at the corner of Kekūanāo'a Avenue and Mililani Street and adjacent to the Waiākea Villas complex, Waiākea, South Hilo, Hawai'i.

You requested the revocation of the subject permit because you repurchased the property and have a new purpose and plan for it.

Therefore, Special Management Area Use Permit No. 09-000033 is hereby revoked. Should you have questions regarding this matter, please contact Daryn Arai of the Planning Department at (808) 961-8142.

Sincerely,

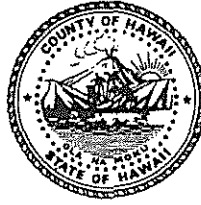
Ronald Gonzales, Vice Chairman
Windward Planning Commission

Lrevocationuse13-041staakwpc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State DLNR-HPD
State Department of Transportation
Administrative Permits Division
Long Range Planning Division
Mr. Gilbert Bailado, GIS Analyst

Hawai'i County is an Equal Opportunity Provider and Employer

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July 20, 2009

Mr. Tom Schnell
Ms. Catie Fernandez
PBR Hawaii
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, HI 96813

Dear Mr. Schnell and Ms. Fernandez:

Special Management Area Use Permit Application (SMA 09-000033)
Request: Development of a Family Entertainment Center, Including Retail
Applicant: Ho'oluana Place, LLC
Tax Map Key: 2-2-30:17 and 19

The Windward Planning Commission at its duly held public hearing on July 1, 2009, voted to approve the above-referenced request for a Special Management Area Use Permit to allow the development of a family entertainment center and retail complex, which would include a bowling alley, restaurants, sports bar, butcher shop, retail shops, and related improvements. The property is located at the corner of Kekūanaō'a Avenue and Mililani Street and adjacent to the Waiākea Villas complex, Waiākea, South Hilo, Hawai'i.

Approval of this request is based on the following:

The applicant requests a Special Management Area Use Permit to develop a family entertainment center in two phases. The first phase will include an approximately 37,000-square foot family entertainment center facility containing an approximately 32-lane bowling alley, a 3,000 to 4,000 square foot kids zone, private birthday party and banquet rooms, 4 to 6 lanes of private bowling for private gatherings and events, laser tag center, indoor miniature golf, and a family restaurant. This facility will be physically connected to five other commercial entities totaling approximately 15,000 square feet, which may include a high-turnover restaurant, and upscale restaurant, a sports bar with a karaoke stage, a common kitchen, and a butcher shop. Second phase development will include an approximately 16,000-square foot retail facility. Approximately 342 parking

stalls are proposed. Phase I improvements are expected to take approximately 14 months to complete and will begin immediately upon approval of all required permits and approvals. Phase II improvements will be based on market demand for retail space and is estimated to take about 14 months to complete. The cost of the project is estimated to be approximately \$11 million. The applicant believes the proposed development will satisfy the need for quality family-oriented indoor recreational activities because there are currently limited opportunities for family recreational activities in Hilo.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i is to preserve, protect, and where possible, restore the natural resources of the coastal zone areas. Therefore, special controls on development within the SMA are necessary to avoid the permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means. The grounds for approving an SMA permit are based upon the following criterion listed in bold type:

The proposed development will not have any significant 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. An environmental assessment (EA) was completed to determine impacts of the proposed development on the natural and human environment. With implementation of the following mitigation measures, the County Planning Department concluded that no significant environmental or ecological effects would occur and a Finding of No Significant Impact (FONSI) determination was issued for the final EA (FEA) on January 23, 2009:

- *Noise and Air Quality:* Comply with Department of Health (DOH) rules and regulations related to noise and fugitive dust. Employ best management practices such as frequent watering during construction activities and vegetating the site as soon as possible. Establish extensive landscaping upon completion of construction.
- *Soils and Water Quality:* Comply with DOH rules and regulations related to water quality. Employ construction best management practices to prevent soil erosion and water quality degradation during construction. Install drywells or alternative low impact development measures such as bio-retention swales in parking areas to infiltrate storm water.
- *Natural Hazards:* Construct buildings in conformance with the Uniform Building Code as adopted by the County of Hawai'i. Adhere to appropriate State and County civil defense evacuation procedures.
- *Historic Resources:* Cease work in the immediate vicinity until the DLNR-

SHPD has authorized work to proceed, should archaeological or historic resources or remains, such as artifacts, burials, concentrations of shell or charcoal be encountered during construction activities.

- *Avian Resources:* Shield exterior lighting to prevent possible accidental bird strikes by Hawaiian Petrels and Newell's Shearwaters.
- *Man-Made Hazards:* Comply with Department of Health- Hazard Evaluation and Emergency Response (DOH-HEER) Office requirements for soil remediation.
- *Transportation Facilities:* Upgrade intersections and limit driveway turning movements as detailed in the Traffic Impact Analysis Report. Provide on-site bicycle racks.

The proposed development will not create significant adverse impacts upon nearby and adjacent properties. Commercial development adjacent to and surrounding the subject properties includes a credit union, real estate office, dance club and karaoke lounge, a government office building, fertilizer/farm supply store and other light industrial businesses. The Waiākea Villas condo/apartment complex is located northwest of the project site and there are single and multiple-family residences across Mililani Street to the east and across Kekūanāo'a Street to the south. A large undeveloped property zoned Resort-Hotel (V-.75) is located north of the project site across Hualani Street. Potential impacts to surrounding properties include short-term noise and air quality impacts from construction activities, on-going noise impacts from operation of the entertainment center, visual impacts including exterior lighting, and traffic impacts. Construction noise and air quality impacts will be temporary and can be minimized through adherence to HAR, Chapters 46, Community Noise Control and 60.1, Air Pollution Control. A condition of approval will require the applicant utilize sound-attenuating building materials in construction of the family entertainment center to prevent interior noise from affecting nearby residents. The affect of on-going exterior noise such as delivery truck traffic can be reduced by extensive landscaping along the properties' boundaries with adjacent properties. To prevent light glare from affecting nearby residents, on-site exterior lighting can be shielded. Traffic impacts to surrounding properties will be reduced by the implementation of the transportation improvements that were recommended in the TIAR and FEA. With implementation of the recommended conditions of approval, the proposed development will not create significant adverse impacts upon nearby or adjacent properties.

The proposed project is consistent with the objectives and policies provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. Waiākea Pond, which flows into Hilo Bay, is located approximately 400 feet from the subject properties. Recreational activities in the area include fishing and picnicking at nearby Wailoa State

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Park. There are no significant recreational resources on the subject properties and no access to the shoreline or Waiākea Pond through the properties.

Any potential storm water runoff or discharge that could reach shoreline waters can be handled by on-site drainage improvements consistent with the requirements of the Department of Public Works. Additionally, a condition of approval will require use of oil/water separators to improve water quality from runoff within the parking areas, which was recommended in the FEA/FONSI. The applicant will also consult with the DOH-HEER office to safely remediate arsenic-contaminated soil to avoid groundwater contamination. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations and construction best management practices. With implementation of appropriate mitigation measures related to water quality and soil remediation, it is unlikely that the development will adversely affect coastal ecosystems, shoreline processes and marine resources.

The DLNR-SHPD determined that no historic properties will be affected by the proposed development based upon the findings of an archeological assessment report prepared by Haun & Associates. In addition, a cultural impact assessment report, prepared by T.S. Dye & Colleagues determined that no cultural resources will be affected.

The project site is located in a tsunami inundation zone. The development will be subject to the requirements of Chapter 27 - Flood Control, of the Hawai'i County Code in order to minimize the effects of coastal hazards. Additionally, to reduce hazard to life and property from this threat, County and State civil defense requirements will be adhered to regarding evacuation procedures. In addition, all buildings will be constructed in conformance with Uniform Building Code specifications.

The proposed development is not a coastal dependent use and therefore its location on the subject properties which are inland and in an area zoned for resort and general commercial uses is reasonable. The site is not noted as an area of natural beauty in the General Plan. Any views towards Waiākea Pond are blocked by the neighboring Waiākea Villas apartment/condo complex. Therefore, the development will not adversely affect scenic and open space resources to and along the shoreline.

The proposed development is consistent with the County General Plan, Hilo Community Development Plan (CDP), Zoning Code and other applicable ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for the subject properties is High Density Urban, which allows general commercial, multiple family residential and related services (multiple family residential -- up to 87 units per acre). In addition, the subject properties are designated Hotel-Resort in

the Hilo CDP and zoned Hotel-Resort (V-.75). The Resort-Hotel district applies to areas to accommodate the needs and desires of visitors, tourists and transient guests. It applies to specific areas where public roads and utilities are available or where suitable alternate private facilities are assured. It may apply to a single isolated hotel or resort with or without a commercial mall or shopping section. The proposed development will provide commercial and indoor recreation opportunities to visitors and residents staying at the adjacent Waiākea Villas, which is also located on property zoned Resort-Hotel. The location of the entertainment center is ideal in that it will draw tourists traveling on Kekūanā‘a Street between downtown Hilo and the airport and harbor.

Upon implementation of the recommended conditions of approval, the project site is located within an area adequately served with essential services and utilities such as water, sewer, transportation systems and other utilities. Conditions of approval will require the applicant to install and/or upgrade any necessary water and sewer lines to connect to the County’s main water and sewer lines within the adjacent streets. Transportation improvements, which were recommended in the applicant’s FEA/FONSI, will also be included as a condition of approval to include construction of eastbound and southbound left-turn lanes at the Kekūanā‘a Street/ Mililani Street intersection, sidewalks along the properties’ Kekūanā‘a Street and Mililani Street frontage, and on-site bicycle racks. Based upon the above information, the proposal conforms to the County General Plan, Hilo CDP and Zoning Code.

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. These 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: An Archeological Assessment report of the properties was completed by Haun & Associates in February 2008 and a Cultural Impact Assessment report was prepared by T.S. Dye & Colleagues in April 2008. In addition, a *Survey of Botanical, Avian and Terrestrial Mammalian Species* was conducted in February 2008 by Rana Productions, Ltd. and Geometrician Associates, LLC for the subject properties.

The valuable cultural, historical, and natural resources found in the area:

The archeological assessment report found no surface archaeological sites or features. In a letter dated October 31, 2008, the Department of Land and Natural Resources (DLNR) Historic Preservation Division concurred with the findings of the report that “no historic properties will be affected” by the proposed project. The cultural

impact assessment found no traditional cultural properties and no evidence that cultural practices are being conducted on the subject properties. 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 on the subject properties. Although not detected during the survey, it is possible that small numbers of the endangered endemic Hawaiian Petrel and threatened Newell's Shearwater birds fly over the area between the months of May and November.

Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. However, there is no evidence that the flora in the area are particularly desired or used for cultural practices. Archaeological remains could inadvertently be uncovered during construction activities.

Feasible actions to protect native Hawaiian rights: The subject properties are not located along the shoreline; therefore, the proposed development will not restrict the use of natural resources along the shoreline. Conditions of approval have been added to protect endangered, threatened, and indigenous birds such as the Newell's shearwater and the Hawaiian Petrel and to utilize native plants in site landscaping. A condition of approval has also been added to protect any unidentified cultural, historical, and natural resource in the event any are encountered during construction. To the extent that traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights.

Based on the above findings, the proposed development will not have substantial adverse impacts on the surrounding area, 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.

Approval of this request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within one hundred and eighty days from the effective date of this permit. Any meter(s) serving the proposed project will require the installation of a backflow prevention assembly (reduced pressure type) by a licensed contractor within five feet of the meter(s) on the applicant's property, meeting with the approval of the Department of Water Supply.

3. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway accesses, parking stalls and loading zones associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Landscaping shall comply with the buffer yard and screening standard for separation of a CG (General Commercial) zone adjoining a RM (Multiple-Family Residential) zone in Rule No. 17.
4. All outdoor lighting shall be shielded and directed away from the Waiākea Villas properties and other residentially zoned properties east of Mililani Street and south of Kekūanāo'a Street.
5. The applicant shall utilize sound-attenuating building materials in construction of the family entertainment center to prevent interior noise from affecting nearby residents.
6. The applicant shall construct eastbound and southbound left-turn lanes at the Kekūanāo'a Street/ Mililani Street intersection prior to issuance of a Certificate of Occupancy. Sidewalks in compliance with County standards shall be provided by the applicant along the properties' frontages on Kekūanāo'a Street and Mililani Street. These improvements shall be constructed within the 20-foot wide future road widening setback along parcel 17's Mililani Street frontage which is delineated on Final Subdivision Map No. 5551, approved on June 1, 1987 by the Planning Department. Additionally, the applicant shall provide a 20-foot wide future road widening setback along parcel 19's Mililani Street frontage. These setbacks shall be delineated on the plans submitted for Final Plan Approval.
7. Bicycle racks shall be provided on-site as proposed by the applicant in the FEA.
8. All driveway connections to Kekūanāo'a Street and Mililani Street shall conform to Chapter 22, County Streets, of the Hawai'i County Code. Driveway connections to Kekūanāo'a Street shall be limited to right-turn in/ right-turn out movements only.

9. Streetlights and traffic control devices shall be installed as may be required by the Traffic Division, Department of Public Works. The applicant shall be responsible for the design, purchase and installation of such devices.
10. The applicant shall comply with Chapter 27 - Flood Control, of the Hawai'i County Code.
11. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
12. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
13. Oil-water separators shall be incorporated into the design and construction of all on-site drainage systems to the greatest extent possible as proposed by the applicant in the FEA.
14. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to Final Plan Approval. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
15. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
16. The project shall connect to the existing County sewer line prior to the issuance of a Certificate of Occupancy.
17. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

18. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
19. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this permit. The report shall 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.
20. An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

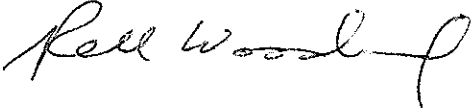
Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Mr. Tom Schnell
Ms. Catie Fernandez
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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

A handwritten signature in black ink that reads "Rell Woodward". The signature is written in a cursive style with a long horizontal flourish at the end.

Rell Woodward, Chairman
Windward Planning Commission

Lhooluanaplacesma09-000033PC

cc: Mr. Thomas Yamamoto
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Department of Land and Natural Resources/HPD
DOT-Highways, Honolulu
Ms. Alice Kawaha
Zoning Inspector-Hilo
Plan Approval Section
Mr. Gilbert Bailado ✓