

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

AUG 3 2015

Suzanne Case, Chairperson
DLNR Main Office
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Dear Ms. Case:

**SUBJECT: Planning Director Initiated
Revocation of Special Management Area Use Permit No. 10-000039
Tax Map Key: 6-1-003:015**

The Leeward Planning Commission, at its duly held public hearing on July 16, 2015, considered the above-referenced request for the revocation of SMA Permit No. 10-000039. Originally, SMA Permit No. 10-000039 was approved by the Planning Commission on May 3, 2010 and issued to Kawaihae Restaurant, LLC, to allow the establishment of a restaurant and commercial /recreational uses, facilities and activities consistent with the Industrial-Commercial Mixed (MCX) zoning on 1.32 acres of land along the ocean (makai) side of Akoni Pule Highway just north of Kawaihae Harbor, South Kohala, Hawai'i.

The Commission voted to approve the revocation of Special Management Use Permit No. 10-000039, since the long-term grand lease to support this project was cancelled due to the infeasibility of developing the site as approved.

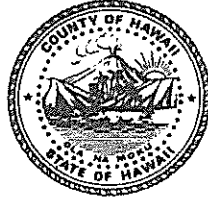
Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8142.

Sincerely,

Brandi K. Beaudet, Chairman
Leeward Planning Commission

LKawaihaerestaurantrevokeSMA10-039lpc
cc: Mr. Gordon Heit/DLNR-Hilo
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State DOT-Highways, Honolulu
State DLNR-HPD
Mr. Gilbert Bailado
West Hawaii Division, Planning Department

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May 3, 2010

Mr. William L. Moore, Vice President
Kawaihae Restaurant, LLC
59-916 Kohala Ranch Road
Kamuela, HI 96743

Dear Mr. Moore:

Special Management Area Use Permit Application (SMA 10-000039)
Request: To Establish a Restaurant and Commercial/Recreational Uses, Facilities
And Activities Consistent with Zoning
Applicant: Kawaihae Restaurant, LLC
Tax Map Key: 6-1-3:15

The Leeward Planning Commission at its duly held public hearing on April 16, 2010, voted to approve the above-referenced request to allow the establishment of a restaurant and commercial/recreational facilities and uses and related activities. The property is located immediately north of the Kawaihae Canoe Club facilities, on the southwest (makai) side of Akoni-Pule Highway (Highway 270), Kawaihae, South Kohala, Hawai'i.

Approval of this request is based on the following:

The applicant requests a Special Management Area Use Permit to develop an oceanfront restaurant and bar with terraced, open-air dining areas; a two-story building containing commercial/recreational facilities, uses and activities; and related improvements including parking, landscaping, rock walls, a package sewer treatment plant and possibly a shallow well/desalination plant to provide brackish water for landscaping. The project is estimated to cost in excess of \$3 million.

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 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 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. An environmental assessment (EA) was completed in December 2004 when the property was rezoned from an Open to Industrial-Commercial Mixed (MCX) zoning district. The EA determined potential impacts on the physical environment, socioeconomic and cultural resources, and infrastructure of developing the property with industrial-commercial mixed land uses. With implementation of the following mitigation measures, the State of Hawai'i 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 on December 23, 2004:

- *Drainage:* The applicant will contain all development-generated water runoff on-site.
- *Air Quality:* Short-term impacts related to air quality are anticipated during construction activities which will be mitigated by the applicant complying with provisions of the State Department of Health's Hawai'i Administrative Rules (HAR) Chapter 11-60.1, Air Pollution Control and Chapter 11-60.1-33, Fugitive Dust.

The proposed development 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. The objectives and policies of Chapter 205A, HRS 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.

Coastal Recreational Resources: State-owned lands are located south and makai of the subject property. These lands include a rocky shoreline and sandy beach and are open to the general public and used for recreation such as launching canoes, fishing, walking, and swimming. Public access to the shoreline in this area is from Kawaihae Road. There is a public parking area at the end of Kawaihae Road just south of the Kawaihae Canoe Club facilities. The proposed development will not prevent the public from continuing to use the shoreline in this area.

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Historic Resources: An archeological inventory survey of the property conducted by Haun & Associates in July 2004 identified one historic site (SIHP 24180) containing four features. In a letter dated September 1, 2004, the DLNR-SHPD determined that no further work or preservation is required for the historic site.

Scenic and Open Space Resources: Currently there is no view of the sea from the Akoni-Pule Highway because of heavy vegetation consisting of tall kiawe trees on the site, thus the view of the sea from the highway will not diminish due to the proposed development.

Coastal Ecosystems and Marine Resources: To address the potential impacts of soil erosion and water quality on marine resources and coastal ecosystems the applicant will implement best management practices as part of the NPDES permit process and comply with Chapter 10, Erosion and Sedimentation Control, Hawai'i County Code. Additionally, the applicant intends to treat development-generated wastewater on-site with a package sewer treatment plant. The treated wastewater will then be re-used for landscaping irrigation or disposed of in a septic system.

Beach Protection: There are no beaches on the subject property.

Coastal Hazards: The elevation of the property varies from approximately 9 to 35 feet above mean sea level. The subject property is located within a tsunami evacuation zone as designated by the County Civil Defense Agency and is located in Flood Zone "X", an area determined by FEMA to be outside the 500-year flood plain. However, the State-owned land immediately makai of the subject property is located in Flood Zone "AE" with a base flood elevation of 9 feet and Flood Zone "VE". These zones are defined as special flood hazard areas inundated by a 100-year flood. Zone "VE" is further defined as an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. To reduce hazard to life and property due to coastal hazards, the proposed project is subject to the requirements of Chapter 27 - Flood Control, of the Hawai'i County Code.

Based upon the above information, the proposed development is consistent with the objectives and policies of Chapter 205A, HRS.

The proposed development is consistent with the County General Plan, South Kohala Community Development Plan (CDP), Zoning Code and other applicable ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for the property is Industrial, which allows manufacturing and processing, wholesaling, large storage and transportation facilities, light industrial and industrial-commercial uses.

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The request is consistent with Kawaihae Policy 1 of the CDP which seeks to “create a balance of recreational, commercial and industrial uses around the harbor area while preserving the cultural and historic importance of the area” and Strategy 1.4 to “expand commercial activities around the harbor area.” Currently the harbor area is dominated by industrial uses. The proposed restaurant and commercial/recreational facility would help to preserve the “small harbor” quality that the community members desire and allow for expansion of local businesses.

The proposed restaurant, bar and commercial/recreational facilities, uses and activities are consistent with the County zoning, as these uses are permitted on Industrial-Commercial Mixed (MCX) zoned lands. Based upon the above information, the proposal conforms to the County General Plan, South Kohala CDP and County zoning.

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 archaeological inventory survey of the property was conducted in July 2004 by Haun & Associates and a botanical survey of the property was conducted in April 2004 by Evangeline J. Funk, Ph.D. The property was re-surveyed in March 2010 by Geometrician Associates LLC to determine if any species within the Solanaceae family, which serves as a host plant for the endangered Blackburn’s Sphinx Moth, are present. No formal faunal study of the property was conducted due to extensive prior land disturbance as a temporary holding area for cattle.

The valuable cultural, historical, and natural resources found in the area: The archaeological inventory survey identified one historic site (SIHP 24180) containing four features. In a letter dated September 1, 2004, the DLNR-SHPD determined that no further work or preservation is required for the historic site. The botanical survey and re-survey did not find evidence of any candidate, proposed or listed threatened or endangered floral species.

Possible adverse effects or impairment of valued resources: There are no known valued cultural, historic or natural resources associated with the property. The property does not abut the shoreline, therefore Hawaiian gathering and fishing activities will not be affected by the development.

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Feasible actions to protect native Hawaiian rights: Should any unidentified cultural or historical resource be encountered during construction activities, the applicant will cease work until the DLNR-SHPD has provided clearance to continue work.

With implementation of the conditions of approval, 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 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. Approval of this request is subject to the following conditions:

1. The applicant(s), its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all conditions in Change of Zone Ordinance 05 153.
3. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to commencing construction, the applicant shall secure Final Plan Approval for the proposed project from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code.
4. The applicant shall comply with Section 9-11.1 of Planning Commission Rule 9 and HRS 205A-30.5 related to the use of artificial light on shoreline and ocean waters.
5. In conjunction with the occupancy of the restaurant, the applicant shall provide a lateral shoreline public access hiking trail/route extending from the Kawaihae Canoe Club area to the northern boundary of the subject property. To the extent that improvements are limited to removal of vegetation and/or removal or placement of loose rocks, the walking trail/route shall be located on the adjacent state property, identified as TMK: 6-1-03:14, which has been reserved for recreational purposes. If improvements other than the removal of vegetation and removal/placement of loose rocks are required, the trail/route shall be located within the project area as close to the makai boundary as feasible and improved by the applicant, as necessary. The trail/route and improvements shall meet with the approval of the Planning Director in consultation with the Kawaihae Canoe Club and the State of Hawai'i Department of Land and Natural Resources.

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6. A Traffic Impact Analysis Report (TIAR) certified by a licensed engineer and approved by the State Department of Transportation shall be submitted to the Planning Director prior to receipt of Final Plan Approval. All driveway connections to Akoni Pule Highway shall conform to the requirements of the State Department of Transportation Highways Division.
7. The applicant shall comply with Chapter 27, Flood Control of the Hawai'i County Code.
8. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
9. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activities.
10. 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.
11. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
12. 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.
13. 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.

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- 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.

Should you have any questions, please contact the Planning Department at 961-8288.

Sincerely,



Frederic Housel, Chairman
Leeward Planning Commission

Lkawaihaerestaurantsma10-000039

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Department of Land and Natural Resources/HPD
DOT-Highways, Honolulu
Ms. Susan Gagorik
Zoning Inspector - Kona
Plan Approval Section
Mr. Gilbert Bailado /
Mr. Kevin Moore/DLNR-Land Division