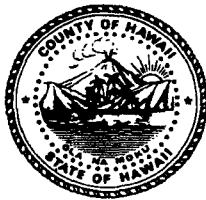


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## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

JAN 16 2019

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

Dear Mr. Fuke:

**SUBJECT: Special Management Use Permit No. SMA 18-000069**  
**Request: To Establish a Micro-Distillery and Visitor Center with a Tasting Room and Related Accessory Improvements**  
**Applicant: Kuleana Spirits, Inc.**  
**Tax Map Key: 5-5-006:por. 010**

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The Leeward Planning Commission, at its duly held public hearing on December 10, 2018, voted to approve the above-referenced request to allow the development of a micro-distillery and visitor center with a tasting room and related accessory improvements on approximately 8 acres of a 43.854-acre parcel within the State Land Use Agricultural District. The project site is located on the east side of 'Upolu Road, just south of 'Upolu Airport, about 0.6 miles north of the Akoni Pule Highway-'Upolu Road intersection, Kealahewa 3rd, North Kohala, Hawai'i.

Approval of this permit 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 Special Permit No. 18-000197.
3. The applicant shall comply Hawai'i Revised Statutes, Section 205A-30.5 related to the use of artificial light on shoreline and ocean waters.
4. Prior to issuance of Final Plan Approval, the applicant shall submit a grant of easement to the County of Hawai'i for pedestrian and vehicular public access along the makai property boundary to align with the historic Hō'ea Road (Site 30911), and contain the features associated with this historic site.

*Hawai'i County is an Equal Opportunity Provider and Employer*

JAN 16 2019

5. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
6. 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.
7. Should any drywells be installed, the applicant shall implement the best management practices contained in the State Office of Planning's *Low Impact Development-A Practitioner's Guide*, for storm water management to minimize the impact of the proposed development on the existing area's hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events.
8. 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.
9. Prior to the issuance of Final Plan Approval, an archaeological mitigation plan pursuant to the September 2018 Archaeological Inventory Survey, shall be submitted to the Planning Department and State Historic Preservation Division.
10. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
11. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

12. 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.

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

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,



Keith F. Unger, Chairman  
Leeward Planning Commission

LKuleanaspiritsSMA18-069lpc  
Enclosure: PC Findings Report

Mr. Sidney M. Fuke  
Planning Consultant  
Page 4

cc w/enclosures: Steve Jefferson, Kuleana Spirits, Inc.  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Land & Natural Resources - HPD  
State Department of Health  
Plan Approval Section  
GIS Section

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

**KULEANA SPIRITS, INC.**  
**SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION SMA 18-000069**  
**(SMA 18-69)**

Based on the following, SMA Use Permit No. 18-000069 is hereby issued to allow for development of a micro-distillery, visitor center with a tasting room, and related accessory improvements on approximately 8 acres of a 43.854-acre parcel of land situated in the Special Management Area and State Land Use Agricultural District. The subject property is located on the east side of ‘Upolu Road, just south of ‘Upolu Airport, about 0.6 miles north of the Akoni Pule Highway-‘Upolu Road intersection, Kealahewa 3rd, North Kohala, Hawai‘i, TMK (3) 5-5-006: por. 010.

The applicant is requesting to establish a micro-distillery to produce rum, visitor center with a tasting room, and related accessory uses on about 8 acres. The applicant proposes to construct the following buildings within the 8 acres, on the mauka eastern corner in order to minimize impacts to surrounding properties:

- An approximately 2,560-square foot micro-distillery processing facility, similar in height (less than 20 feet tall) and size as the storage shed. This structure would also include an office, mechanical room and restroom.
- An approximately 2,560-square foot building to accommodate tasting and sampling, and retail sales of the beverages and associated promotional products like T-shirts, hats, etc. This structure would include a tasting area, approximately 300-square foot kitchen for preparation of pupus to accompany the beverage tastings, an office and restrooms. The kitchen and tasting will not operate independent of the micro-distillery processing facility.

All of the structures would be less than 20 feet in height. Parking areas for employees, visitors, and loading and unloading will be provided in accordance with the Zoning Code. The preliminary site plan shows 14 parking stall, including two stalls that will be ADA accessible and two loading zones adjacent to the proposed tasting room area. There will approximately 15 employees. Visitor hours would be daily from 9:00 a.m. to sunset, or roughly 6:00 p.m. The planned opening is fall of 2019 and the estimated construction cost is \$2.5 million.

The applicant originally proposed to construct an approximately 2,560-square foot storage shed to house agricultural equipment such as tractors, and include an area to extract sugar cane juice within the 8-acre permit area. However, at the December 10, 2018 Planning Commission hearing, the applicant informed the Commission that this structure would be built outside of the 8-acre permit area, in the southwest corner of the property near ‘Upolu Road, as an agricultural shed structure which is a permitted use in the State Land Use Agricultural District without the need for a Special Permit.

At least 20 acres on the west side of the property will be planted in heirloom-variety sugarcane, which would then be harvested and distilled into rum. An additional 8 acres will be set aside for non-sugar cane agricultural crops, such as citrus fruits,

Hawaiian Sweet potato ('uala), breadfruit ('ulu) or ti (kī), which can be imported and blended with the rum to produce a different product. The applicant may also secure some of its sugarcane off-site.

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.** The proposed project did not meet the criteria in State law for requirement an environmental assessment or environmental impact statement. The property is located about 700 feet from the rocky cliff shoreline, thus the proposed use is not expected to have a substantial environmental or ecological effect.

**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:* The property is located about 700 feet mauka of a rocky cliff shoreline and sits at an elevation of about 110-200 feet. The property is located in the Ala Kahakai National Historic Trail corridor, which is a 175-mile long corridor of the prehistoric *ala loa*, and other trails on or parallel to the coast extending from Upolu Point, down the west side of the island to South Point. There is a historic road (Hō'ea Road) that runs along the makai property line. There is a road easement (Easement 92) that roughly aligns with this historic roadway, which has been used by the public to travel from 'Upolu Road towards the coastline around the east side of the airport. The applicant intends to continue to provide unfettered public access along this easement and will provide a fence at the mauka edge of this easement. Additionally, the Planning Director recommends a condition be added to the permit to require the applicant to grant a public access easement to the County by adjusting the current easement to align with and include the historic features in the historic Hō'ea Road.

*Historic Resources:* An Archaeological Inventory Survey (AIS) was completed by Haun & Associates in September 2018. The survey identified five historic sites, including the two historic roads and historic railroad alignment identified by the National Park Service, as well as a ditch complex for flood control and gate posts. The proposed development will result in the destruction of feature of Site 30914 (ditch complex) and access to the property will extend across the former path of Site 30913 ('Upolu Point Road); however, no remnants of this road are present within the project area. None of the

other sites or features will be impacted by the proposed development. The State Historic Preservation Division (SHPD) has not yet transmitted a memo indicating the AIS is acceptable; however, in an email dated November 13, 2018 to the Planning Department, the SHPD archaeologist indicated that SHPD supports preservation of the historic Hō'ea Road (Site 30911) in an easement for pedestrian and vehicular use with the understanding that the preservation would be "as is", i.e., would not involve any modification, resurfacing, etc., and that the current easement should be adjusted to capture the historic road alignment that is recorded in the Haun survey. As previously stated, the Director concurs with this recommendation that the public access easement be adjusted and granted to the County.

*Scenic and Open Space Resources:* The land gently slopes from the highway to the sea in this area of Kohala. The property, surrounding area and sea can be seen from Akoni Pule Highway, which is located over one mile from the property. A wind farm located just mauka of the subject property obstructs clear views of the sea from the highway. The applicant proposes to limit the height of the structures to less than 20 feet in height in order to minimize impacts to open and scenic resources.

*Coastal Ecosystems and Marine Resources:* The DLNR- Commission on Water Resource Management (CWRM) is the State entity that carries out the management and protection of surface and groundwater resources through regulation and issuance of permits. The applicant has received a Well Construction and Pump Permit from CWRM for a 211-foot deep well to draw approximately 20,000 gallons of water per day from the aquifer. 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, and State Department of Health (DOH) water pollution control regulations. Additionally, the applicant will install a wastewater treatment and disposal system as required by the DOH.

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

*Coastal Hazards:* The property slopes seaward from the 200-foot elevation on the south side of the property to the 110-foot elevation on the north side of the property. It is not 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.

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, North Kohala Community Development Plan (CDP), Zoning Code and other applicable ordinances.** The County of Hawai'i's General Plan is the policy document for the long range comprehensive development of the island of Hawai'i. One of the purposes of the General Plan is to guide the pattern of future development in this County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Important Agricultural Land. The majority of the subject property will be used to grow crops in support of the proposed use. Thus, the proposed use will support many of the agricultural land use policies of the General Plan and North Kohala CDP including the following policies:

**General Plan-Land Use- Agricultural Policy**

- Ensure that development of important agricultural land be primarily for agricultural use.

**North Kohala CDP Strategy 1.4**

- Promote and support a community of diversified agriculture.

Thus the request will not be contrary to the General Plan and Community Development Plan.

**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 reconnaissance survey of the entire property was performed by T.S. Dye & Colleagues in March 2017. An Archaeological Inventory Survey (AIS) was completed by Haun & Associates in September 2018. The property was surveyed in August 2018 by Rana Biological Consulting to determine if any species within the Solanaceae family, which serves as a host plant for the endangered Blackburn's Sphinx Moth, are present.

The valuable cultural, historical, and natural resources found in the area: The AIS survey identified five historic sites, including the two historic roads and historic railroad alignment identified by the NPS, as well as a ditch complex for flood control and gate posts. The proposed development will result in the destruction of feature of Site 30914 (ditch complex) and access to the property will extend across the former path of Site 30913 ('Upolu Point Road); however, no remnants of this road are present within the project area. None of the other sites or features will be impacted by the proposed development. The botanical survey did not find evidence of any candidate, proposed or listed threatened or endangered species.

Possible adverse effects or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing activities will not be affected by the development. The existing public access easement will be adjusted to capture the historic Hō'ea Road alignment that is recorded in the Haun survey.

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.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental 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, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with



Disabilities Act (ADA), possible mitigation to meet Federal Aviation Administration rules and regulations, among many 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.

Finally, at the December 10, 2018 hearing the Commission voted to approve a revision to Condition No. 4 and to add a new condition. The revision to Condition No. 4 was to clarify that the grant of easement shall be submitted to the County prior to issuance of Final Plan Approval and the new condition (Condition No. 9) was added to require the applicant to submit an archaeological mitigation plan to SHPD and the Planning Department prior to the issuance of Final Plan Approval.

Based on the above findings, it is determined that 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.