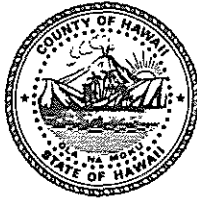


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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June 21, 1996

Mr. Ted Baldau, Project Engineer
Reid & Associates, Inc.
75-166 Kalani Street, Suite 201
Kailua-Kona, HI 96740

Dear Mr. Baldau:

Special Management Area Use Permit Assessment
Application (SMAA 96-15)
Special Management Area Minor Use Permit No. 45
Applicant: Eric Von Platen Luder
Request: Construction of a 1,575 Square-Foot At-grade
Concrete Slab with Fencing to Accommodate An Open-air
Dining Area Consisting of a Open-air Bar and Portable
Tables and Chairs
Tax Map Key: 7-5-09: 16; Puua, North Kona, Hawaii

We are in receipt of the above-described application on March 8, 1996, to allow the construction of a 1,575 square-foot concrete slab to accommodate the establishment of an open-air dining area consisting of a bar and portable chairs and tables; all of which will be partially enclosed by a wooden fence (hereinafter referred to as "improvements"). The proposed improvements will not exceed \$125,000 in valuation and will not have an significant adverse impact to coastal resources. Therefore, we are hereby issuing Special Management Area Use Permit No. 45 to allow the proposed improvements, for the reasons as detailed below.

BACKGROUND INFORMATION

1. **Land Ownership:** The subject property is owned by Olu Kai, Ltd.
2. **Existing Improvements:** The subject property currently vacant of any structures and is currently maintained as a grass lawn with palm and kiawe trees. A concrete-masonry seawall is located along most (approximately 82 linear feet) of the subject property's shoreline frontage. According to

plans on file with the Planning Department, the existing seawall is composed of stacked stone and cement with a concrete cap with a maximum height of five feet from grade. The seawall has a width of one foot at the cap to three feet at its base. The seawall, which replaced a previous stone wall which was destroyed, was constructed in 1986.

3. **Relevant Approval:** Shoreline survey, as certified by the Chairman of the Board of Land and Natural Resources on March 13, 1995, defines the makai face of the existing seawall fronting the subject property as the certified shoreline. This survey, which accompanied the subject SMA Use Permit Assessment Application, was submitted on March 8, 1996. Pursuant to Section 8-4(a)(1) and 8-4(c), the Planning Director will not require a re-certification of the shoreline for the purposes of this application since the location of the certified shoreline is fixed by a man-made structure.

APPLICANT'S REQUEST

4. **Request:** The applicant wishes to construct a 1,575 square foot concrete slab at-grade within the subject property to accommodate an open-air dining area as part of its existing restaurant operations (Huggo's) located on a parcel immediately adjacent to the south. A circular, low-profile, open-air bar will be placed on the concrete slab as well as portable tables and chairs. Cocktail service will be provided from the bar. While the application describes the construction of a six-foot high wooden fence along the subject property's northern and eastern (mauka) property boundaries, a June 19, 1996, telephone conversation with Ted Baldau of Reid and Associates confirmed that the height of the wooden fence will be less than six feet. Its overall length will be approximately 122 linear feet. All improvements will be situated a minimum of 20 feet from the existing seawall, whose makai face defines the certified shoreline.
5. **Total Valuation:** According to the application, the proposed improvements are anticipated to cost about \$35,000.

STATE AND COUNTY PLANS

6. **State Land Use District:** The subject property is designated Urban by the State Land Use Commission.

7. **General Plan:** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the affected area as Resort, which includes uses such as hotels, condominium-hotels and supporting services.
8. **Kona Regional Plan:** The Kona Regional Plan recommends a Resort-22 units per acre (V-22) designation for the subject property, which is roughly equivalent to a unit density of 2,000 square feet per unit.
9. **County Zoning:** The subject property is designated Resort-Hotel-750 square feet per unit (V-.75) by the County Zoning Code. Pursuant to Section 25-65 of the Zoning Code, a fence six feet and over in height shall be considered as "accessory structures" subject to the yard setback requirements of eight (8) feet from all property boundaries. Fences less than six feet in height are exempt from these yard setback requirements.
10. **Special Management Area (SMA):** The subject property is located within the County's Special Management Area. Therefore, this Special Management Area Minor Use Permit is being issued in satisfaction of Rule No. 9 of the Planning Commission regarding the Special Management Area.
11. **Shoreline Setback Regulations:** The subject property, consisting of 5,318 square feet, qualifies for the establishment of a 20-foot shoreline setback pursuant to Rule No. 8-5(a) of the Planning Commission. The average depth of the parcel is less than 100 feet (approximately 42 feet).
12. **Kailua Village Special District:** The subject property is situated within an area designed as the Kailua Village Special District. Therefore, the architectural and design concepts of all buildings and structures proposed on the subject property will be subject to the review of the Kailua Village Design Commission.

DESCRIPTION OF THE PROPERTIES AND SURROUNDING AREA

13. **Subject Property:** Real Property Tax Division records indicate the subject property as having a total land area of approximately 5,318 square feet. Tax maps reflects a land area of .10 acre, or 4,356 square feet. According to the recent survey/site plan submitted with the application, the

subject parcel consists of 5,318 square feet, of which approximately 730 square feet of land is located makai of the certified shoreline.

14. **Existing Use:** As previously mentioned, the subject property is currently vacant of any use or structures, with the exception of a seawall along the property's shoreline frontage.
15. **USDA Soil Survey Report:** Soils within the subject property consist of Punalu'u extremely rocky peat, which consists of well-drained, thin organic soils over pahoe-hoe lava bedrock. The peat is rapidly permeable. The lava is very slowly permeable, although water moves rapidly through the cracks. Runoff is slow and the erosion hazard is slight.
16. **FIRM:** The Flood Insurance Rate Maps (FIRM) designates the entire property within the 100-year flood zones (AE and VE). According to the application, "Part of the parcel is in the VE (wave velocity) hazard area. The concrete slab in this area will be at the existing grade and will not obstruct or redirect any waves which reach the parcel. The other part of the parcel is in the AE (water inundation) hazard area. The bar will be in this hazard area, but will be designed and constructed in accordance with the Flood Control chapter of the Hawaii County Code."
17. **Archaeological/Floral/Fauna Resources:** An archaeological inventory survey of the subject property was not conducted by the applicant. The subject property is not identified as containing features listed on the Hawaii and National Registers of Historic Places. According to the applicant, the subject property had been previously graded. Therefore, the likelihood of significant archaeological features being located on the subject property is remote.
18. **Surrounding Land Use Designation/Uses:** The subject property is located predominantly within and surrounded by a larger 9,244 square foot parcel (7-5-09: 14) zoned V-.75 by the County and which currently accommodates Huggo's restaurant. Located adjacent to the north are Open-zoned State lands fronting Oneo Bay.

UTILITIES AND SERVICES

19. **Access:** Access to the project area is provided by Kahakai Street, a County-maintained roadway. The proposed use will

not depend on direct access to a roadway system as it will be made a part of the on-going restaurant operations located on the adjoining parcel to the south (Huggo's).

20. **Other Essential Utilities and Services** are or can be made available to support the subject property and its proposed uses.

ASSESSMENT

The purpose of Chapter 205A-HRS, and Planning Commission Rule No. 9, Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the island's coastal zone areas. Special controls on development within these areas have been enacted to prevent permanent loss of valuable resources. Upon review of the subject request, the Planning Director finds that the proposed construction of a 1,575 square-foot concrete slab to accommodate the establishment of an open-air dining area consisting of a bar and portable chairs and tables; all of which will be partially enclosed by a 6-foot high wooden fence, are consistent with State and County Special Management Area policies, as outlined below:

- a) **Recreational Resources:** The proposed improvements will not interfere with recreational uses of the coastal area, which is rocky and narrow. All improvements will be situated mauka of the existing seawall at least 20 feet from the certified shoreline, which runs along the makai face of the existing seawall. The subject property itself is not recognized as a coastal recreational resource. Therefore, approval of the proposed improvements, which will be confined to the subject property, will have no effect on existing or potential recreational resources within the surrounding area.
- b) **Historical and Natural Resources:** The subject property is not known to contain any archaeological feature which have been included on the Hawaii or National Registers of Historic Places. A condition of approval will be included within this permit requiring the applicant to cease all grubbing work and to notify the Planning Department should they encounter archaeological features or sites. The subject property, which has been previously graded and extensively landscaped, does not offer an essential habitat for endangered species of plants or animals. The proposed improvements, by itself, should not have an adverse impact to historical or natural resources within the area.

- c) **Scenic and Open Space Resources:** The subject property is not located within an area recognized by the General Plan as an example of natural beauty. The proposed improvements will not have any effect upon the County's open space and scenic resources. The proposed concrete slab will be constructed at-grade with the semi-circular bar to be of a low-profile design. While a six-foot high wooden fence will be constructed along portions of the property's mauka and northern boundaries, it would be an extension of the existing Hugo's restaurant complex. Lands located immediately to the north are zoned Open and currently provides for extensive and unobstructed makai views from Alii Drive. While makai views from Kahakai Street will be blocked by the construction of the six-foot high fence, its construction will not, by itself, impose a severe impact on the overall coastal viewplane within this area of Kailua-Kona.
- d) **Coastal Ecosystems:** The proposed improvements will not adversely impact the nearby coastal ecosystem. The proposed improvements will be primarily limited to the construction of a concrete slab and fencing. Runoff generated by the impermeable slab will be controlled on-site through drainage requirements imposed by the Department of Public Works. Dining and cocktail activities to be conducted upon the slab are not activities which will have a direct impact upon the coastal environment.
- e) **Economic Uses:** Approval of the proposed improvements will provide an added dining experience for patrons of Huggo's restaurant. The proposed improvements and its use for dining and cocktail services is an economic use of land which will be in balance with the need to ensure the protection of our coastal resources.
- f) **Coastal Hazards:** The subject property is located within an area subject to coastal flooding hazards. A building permit will be required for the proposed improvements to ensure that all improvements complies with the requirements of Chapter 27, Hawaii County (Flood Control) Code.

DETERMINATION

Based on the preceding assessment, the Planning Director has determined that approval of the proposed improvements would not be contrary to the State and County policies governing the Special Management Area. The Planning Director hereby approves Special Management Area Minor Use Permit No. 45, **subject to the following conditions:**

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the approval of this permit.
3. Final Plan Approval of the proposed improvements shall be secured from the Planning Director prior to commencing construction.
4. Prior to commencing any land alteration activities, the applicant shall stake and erect a continuous flag ribbon along the 20-foot shoreline setback line based on the certified shoreline survey dated March 8, 1995. No land alteration activities shall be permitted makai of the 20-foot shoreline setback line unless a Shoreline Setback Variance is first secured from the Planning Commission in accordance with its rules. No land alteration or construction activities within the subject property may proceed until written confirmation of the staking and flagging is issued by the Planning Department.
5. The proposed improvements shall be completed within two years from the date of approval of this permit. The applicant shall notify this office, in writing, upon completion of all proposed improvements.
6. 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.
7. An extension of time for the performance of conditions within the 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;

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- b) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
 - c) 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).
8. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

Please feel free to contact Daryn Arai of my staff at 961-8288 should you have any questions.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

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xc: Ms. Donna Kiyosaki, Chief Engineer
West Hawaii Office
Land Use Controls Division
SMA Section