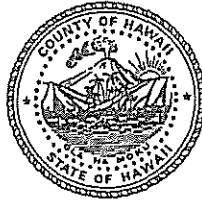


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

February 15, 2005

Mr. Robert D. Triantos, Esq.
75-1000 Henry Street, Suite 209
Kailua-Kona, Hawaii 96740

Dear Mr. Triantos:

Special Management Area Use Permit Assessment Application (SMAA 05-08)
Special Management Area (SMA) Minor Permit No. 178 (SMM 178)
Applicant: Kailua Kona Village Development Group
Landowners: Kailua Kona Village Development Group
Project: Construction of an outdoor seating lanai addition to an existing restaurant and to fill an existing swimming pool within the shoreline setback area with concrete.
Tax Map Key: (3) 7-5-007:021

By this letter we acknowledge receipt of the subject SMAA application and transmit the referenced SMA Minor Permit No. 178, which is approved with conditions to allow for the construction of the subject project on the subject shorefront property.

Should you have questions, please feel welcome to contact Larry Brown or Esther Imamura of my staff at 961-8288.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Yuen", is written over the printed name.

CHRISTOPHER J. YUEN
Planning Director

LMB:cd
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Mr. Robert D. Triantos, Esq.

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Encl: SMM 178

xc: ✓Ms. Susan Gagorik – Long Range Planning
Mr. Norman Hayashi – Planning Commission, w/encl.
Planning Department – West Hawaii Office w/encl.

Special Management Area Minor Permit No. 178

Project: Outdoor Seating Lanai and filling in of an existing swimming pool located within the shoreline setback area
Applicant: Kailua Kona Village Development Group
Land Owner: Kailua Kona Village Development Group
Location: Keopu 3rd, Honuaula 1st & Hienaloli 1st, North Kona, Hawaii
TMK: (3) 7-5-007:021

Applicant's Request

1. Project Description:

The applicant proposes to construct a new outdoor seating lanai as an addition to the existing restaurant situated at the northern end of the subject property. The proposed addition will consist of an uncovered two-terraced seating area of approximately 1,992 square feet that will project 20 feet into the 40-foot shoreline setback area. An existing swimming pool located within the shoreline setback area at the southern end of the subject property has fallen into disrepair and poses a public safety hazard. The applicant proposes to fill the pool with concrete to level it with the existing pool deck.

2. Purpose of Project:

The project is proposed to enhance the existing restaurant's ability to provide a seashore ambience for the visitors and residents who would use the restaurant for their leisure and dining experience. Filling of the swimming pool is intended to make the south side of the property safer for the public and the owner of the property.

3. Project Valuation: \$116,000.00

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(v), relating to the Special Management Area, "development" includes the construction, reconstruction, or alteration of the size of any structure.

Therefore, the proposed project requires a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** The subject property is designated Urban by the State Land Use (SLU) Commission.
2. **General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property for Open and Resort uses.
3. **County Zoning:** The subject property is zoned Resort-Hotel (V-.75) by the County of Hawaii.
4. **Special Management Area:** The subject property is located in the SMA.

Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- ☒ 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. Such adverse effect 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 the elimination of planning options.
- ☒ The proposed development is consistent with the Hawaii County General Plan and the Zoning Code.
- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, HRS, to:
 - ☒ Provide coastal recreational opportunities accessible to the public.
 - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
 - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
 - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
 - ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.
 - ☒ Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.
 - ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
 - ☒ Stimulate public awareness, education, and participation in coastal management.

- ☒ Protect beaches for public use and recreation.
- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
 - ☒ Marine Resources
- ☒ The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

As discussed above, 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.

However, the proposed improvements are within the shoreline setback area and will require approval of a Shoreline Setback Variance by the Planning Commission.

Special Management Area Use Permit No. 168 (SMA 168) and Shoreline Setback Variance No. 612 (SSV 612) were approved on September 24, 1981 to allow for the construction of a new restaurant, demolition of an existing restaurant and an existing swimming pool (same pool as referenced in this application), repairs to the existing seawall, landscaping, paving, and related improvements within the Kona Inn Shopping Village complex. Condition 6A of these permits required that "public access to and along the shoreline areas of the subject property be maintained." Condition 6B required that the applicant shall submit a public access plan meeting with the approval of the Planning Director at the time of Plan Approval. This public access plan was to include:

1. The maintenance of existing public access to the seaward portions of the subject area;
2. Provisions for lateral public easement along the shoreline portion of the subject area (entire Kona Inn Shopping Village complex) at least 10 feet wide; and
3. Construction details including signage, material used, and final grade if necessary.

By Planning Department letter, dated November 7, 1985, receipt of a "public pedestrian shoreline access plan for the Kona Inn Shopping Village Complex" was acknowledged and compliance with Condition 6B of SMA 168 and SSB 612 was deemed satisfied.

However, Planning Department files contain only an undated site plan, bearing the signature of William J. Kimi Jr., titled "Kona Inn Shopping Village Public Access & Shoreline – Maintenance by Kona Inn Shopping Village – All Existing Grades." The site plan appears to depict a continuous Public Shoreline Access walkway of varying widths, none of which meet the minimum 10'-wide lateral access requirement, from Ali'i Drive to the seawall along the northern property line of the subject property and along the seawall to the south property line, then mauka along the property line approximately 90 feet where it terminates. While the Planning Department recognizes that this applicant/land owner has allowed unlimited public access to and along the shoreline over the past two decades, the 1985 plan does not meet the specific requirements of Condition 6B and that an updated public access plan is necessary to ensure the perpetual public access to and along the shoreline in the project area.

The estimated project cost of approximately \$116,000 is not in excess of \$125,000.

The Department of Public Works – Engineering Division submitted the following comments, dated July 28, 2000, regarding the Environmental Assessment review of the subject project. Kiran Emler of the Engineering Division's Kona office confirmed that the comments provided below are adequate and relevant to requirement for review by the Chief Engineer for compliance with Chapter 27, Flood Control of the Hawaii County Code pursuant to Rule 9-10E, Planning Commission Rules of Practice and Procedure.

"We review the subject proposals and have the following revised comments:

Swimming Pool

We have no comments.

Deck

The project is within the Flood Hazard Zone VE on the Federal Insurance Rate Map which means the site is subject to coastal flooding and high velocity wave action. The deck shall be constructed as required under HCC Chapter 5, Building, and related construction codes and HCC Chapter 27, Flood Control. Documentation may be submitted to support exemption of the deck from Chapter 27 as an addition to a nonconforming structure for which improvements over the previous 3 years and the deck addition together do not constitute "substantial improvement" (See Definitions Section 27-12).

The U.S. Army Corps of Engineers and State Department of Land and Natural Resources should be consulted if the projects are makai of the certified shoreline.

If you have any questions regarding the above comments, please feel free to contact Kiran Emler of our Kona office at 327-3530."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 178** is hereby approved to allow for the proposed construction of an outdoor seating lanai as an addition to the existing restaurant situated at the northern end of the subject property. The proposed addition will consist of an uncovered two-terraced seating area of approximately 1,992 square feet that will project 20 feet into the 40-foot shoreline setback area. Also approved is the filling, with approved fill material and concrete, of the swimming pool situated within the shoreline setback area at the south end of the subject property to level it with the existing pool deck. This approval is subject to the applicant's compliance with the conditions of approval as specified below.

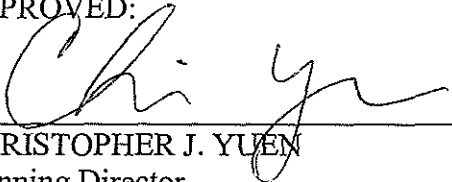
Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 178** 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 comply with all applicable requirements of all State and County of Hawaii and Federal departments and agencies.
3. Prior to the issuance of any permits or the commencement of any uses or activities in the shoreline setback area a Shoreline Setback Variance shall be secured from the Planning Commission.
4. Prior to submittal of an application for Plan Approval, an updated Shoreline Public Access Plan shall be submitted to and approved by the Planning Director. The Shoreline Public Access Plan shall include, but not be limited to the following:
 - a. A recorded easement providing a lateral pedestrian walkway mauka of the seawall and not less than 10' in width along the entire shoreline of the subject property;
 - b. A recorded easement providing at least one 10'-wide pedestrian access through the subject property between Ali'i Drive and the shoreline;
 - c. Connectivity between the lateral pedestrian access of the subject property and the adjacent properties to the north and south; and
 - d. Location and description of existing and proposed public access signage clearly indicating the public access to and along the shoreline.
5. Applicant shall submit a copy of all recorded easements that provide for the shoreline public access requirements of this permit to the Planning Department within 30 days of their recordation.
6. Plan Approval for the proposed project shall be secured from the Planning Director pursuant to Chapter 25 of the Zoning Code.
7. Construction and demolition activities approved by this permit shall be completed within one (1) year from the date of this permit or an approved Shoreline Setback Variance, whichever is later.

8. An extension of time for the performance of the conditions contained herein 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 original reasons for the granting of the permit; and
 - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
9. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

APPROVED:



CHRISTOPHER J. YUEN
Planning Director

FEB 15 2005

Date