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Special Management Area Minor Permit No. 14-000294

Project: Placement of Tables, Chairs, and Gas Torches, Installation of Garden Gates, and Landscaping Improvements
Applicant(s): Lava Lava Beach Club, LLC
Land Owner(s): Waikoloa BC LLC
Location: 'Anaeho'omalua, South Kohala, Hawai'i
TMK: (3) 6-9-007:015 **Land Area:** 10 acres

Applicant's Request

1. Project Description:

The applicant proposes to provide portable furniture such as tables, chairs, and couch chairs within the 40-foot shoreline setback area but no closer than 10-feet from the lateral access path. The applicant also proposes to install gas propane torches in the same area within the shoreline setback area and also fronting the residences. To service the gas torches, a propane gas line would be installed about 18 inches below ground within a 10-inch wide trench. The applicant would also like to add additional landscaping consisting of grassing and the planting of naupaka and hau or similar trees outside of the 40-foot shoreline setback area. In conjunction with the planting, a drip irrigation system would also be installed. Finally, the applicant proposes to install a picket fence with a garden gate fronting each of the residences.

2. Purpose of Project:

The applicant is proposing several non-structural improvements to the property. First, to create a more natural beach like experience, the applicant is proposing to provide portable furniture within the 40-foot shoreline setback area. Secondly, gas torches are proposed to further help illuminate the access path and the grounds themselves, making it safer for pedestrians and guests to move around the property. Thirdly, additional landscaping and fencing are proposed to provide some measure of privacy between the residences and the users of the shoreline.

3. Project Valuation: \$50,000.

4. Determination:

According to Hawai'i Revised Statutes (HRS) Chapter 205A-22 and Planning Commission (PC) Rule No. 9-4 (e) (1) (A), "Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste," is not exempt from the definition of "development." Therefore, the placement of portable tables and chairs, placement of gas torches, installation of garden gates, and landscaping improvements will require a review against the SMA rules and regulations.

State and County Plans

1. **State Land Use District:** The subject parcel is designated Urban by the State Land Use (SLU) Commission.
2. **General Plan:** The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation is Resort Node and Open.
3. **County Zoning:** The subject parcel is zoned V-2a (Resort-Hotel) by the County of Hawai'i.
4. **Special Management Area (SMA):** The subject parcel is located entirely within the Special Management Area (SMA) with frontage along the shoreline.
5. **Flood Zone:** VE.

Compliance with Objectives and Policies of Chapter 205A, Hawai'i 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 Hawai'i 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.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated project cost of approximately \$50,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated January 7, 2014, states the following:

"We reviewed the subject application and our revised comments are as follows:

We have determined that the proposed activity is located within Flood Zone "VE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Ground alterations, new construction, improvements to repetitive loss structures and substantial improvements of structures within Parcel 3/6-9-007:015 are subject to the requirements of Chapter 27- Flood Plain Management, of the Hawai'i County Code.

We received additional information from the applicant regarding the proposed fence which is to be less than 4 feet wide and anchored and constructed of slats with opening between. The gates are existing. We do not considered them prohibited obstructions under Chapter 27 of Hawai'i County Code.

We concur with the Planning Director's Declaration of HRS Chapter 343 Exemption under HAR Chapter 200."

Pursuant to Planning Commission Rule 9-10(e), Special Management Area Minor Permit No. 14-000294 is hereby approved to allow the placement of portable tables and chairs, placement of gas torches, installation of garden gates, and landscaping improvements on the subject property.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 14-000294** 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 secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. Other than the approved placement of gas torches and portable tables and chairs, no land alteration, grubbing, demolition or construction activities, including, but not limited to, the stockpiling of debris, construction materials or equipment, shall occur in the shoreline setback area without securing a prior written determination of minor structure or activity pursuant to PD Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.
4. As required by PD Rule 11-8 (b), the work within the shoreline setback area shall be completed within one (1) year from the date of this determination of minor structure or activity within the Shoreline Setback Area.
5. At no time shall the applicant be permitted to rope off or partition any portion of Anaehoomalu Bay, or place any signs or devices that would, directly or indirectly, either restrict public use of the beach or give the impression that any portion of the beach is either solely or primarily for resort guests or residents.
6. Neither the landowner nor any agent of the landowner or its successors shall, at any time, impede or otherwise restrict use of the lateral 10-foot wide public access easement along the shoreline.

7. Any further grading, grubbing, filling or other construction activity, including but not limited to, the construction of structures of any type shall require further review and approval as provided under Chapter 205A, HRS, and PC Rule 9.
8. Artificial light from exterior lighting fixtures, including, but necessarily limited to floodlights, uplights or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to Chapter 205A-71(b), Hawai'i Revised Statutes.
9. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigative measures are taken for the discovery; with written guidance from the State Historic Preservation Division of the Department of Land and Natural Resources.
10. 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).
11. The Planning Director shall initiate procedures to revoke this permit should any of the conditions not be met or substantially complied with in a timely fashion.

APPROVED:



DUANE KANUHA
Planning Director

JAN 15 2014

Date