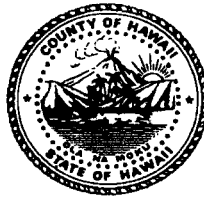


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

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

February 23, 2018

Steven S.C. Lim, Esq.  
Carlsmith Ball LLP  
P.O. Box 686  
Hilo, HI 96721

Dear Mr. Lim:

**SUBJECT: Special Management Area Use Permit Assessment Application  
(SAA 17-001545)**

**Special Management Area Minor Use Permit (SMM 18-000383)**

**Applicant: Ulu Development LLC**

**Subject: "After-the Fact" Proposed Interior and Exterior Repair,  
Maintenance, Alterations and Additions, including Snack  
Shack**

**TMK(s): (3) 7-7-008:022 and 7-7-008:022:0038, N. Kona, Hawai'i**

Our office received a SMA Assessment application (SAA 17-001545) dated November 28, 2017, in response to an October 10, 2017, Notice of Violation and Order (NOV) for construction/demolition activity that occurred without prior Special Management Area review and approval. As the fine was paid and all corrective actions required by the NOV were complied with in a timely fashion, the NOV file was closed.

Subsequently, a supplement to SAA 17-001545 was submitted to our office on January 19, 2018, as well as photographs dated 1968 that displayed shade umbrellas with tables and chairs on the lānai of the restaurant. Lastly, a revised memorandum dated December 28, 2017, from the Department of Public Works, Engineering Division (enclosed) was received, which provided comments on the proposed scope of work.

This 1.1-acre parcel is zoned Resort-Hotel (V-1.25) by the County, designated Urban by the State Land Use Commission, and is designated Open by the Land Use Pattern Allocation Guide (LUPAG) Map. It is in the Special Management Area (SMA) and located in the "shoreline area" as defined by Hawai'i Revised Statutes (HRS) Chapter 205A-41. However, although the shoreline was certified on September 13, 1993, to be along the seaward face of the CRM seawall, no improvements to the seawall are proposed at this time.

**Pertinent SMA Permits for the Proposed Request:**

1. Shoreline Setback Variance No. 432 (SSV 432) was approved on February 13, 1975, to allow the installation of sliding glass doors and improvements for restrooms facilities.
2. Special Management Area Minor Permit (SMM 81-34/SSV 613) was approved on December 3, 1981, to allow in part for the construction of a 4-ft. high mansard along the edge of the new roof structure. A 20-foot shoreline setback area was approved for this parcel.
3. SMM 90-11 was approved on June 1, 1994, to allow for the installation of reinforcing beams and posts to support existing concrete support beams and other improvements.

**Special Management Area Exemption Determination for Restaurant:**

1. Scope of work for Unit 38:
  - a. "After-the-fact" exterior and interior demolitions and alterations
  - b. New interior alterations
  - c. Exterior alterations, including modification of the existing concrete footing and stem wall located along the southwestern portion of the building resulting in a 70-square foot reduction to the lānai dining area.
  - d. Replacement of the tiki torches and gas lines on the seawall

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4(e)(2)(F) and (P), "Development" does not include "*Repair, maintenance, or interior alterations to existing structures or relating to existing uses*" and "*Non-structural improvements to existing commercial structures,*" respectively. Therefore, these proposed activities outside of the 20-foot shoreline setback area, as presented in SAA 17-001545 and partially revised in the Supplement, are exempt from the definition of "development."

Additionally, we have determined that portions of the scope of work that will occur within the 20-foot shoreline setback area are consistent with the previous approvals and conditions of the enclosed SSV 432, SMM 81-34/SSV 613 and SMM 90-11.

Lastly, we find that the proposed request for tables, chairs and umbrellas in the shoreline setback area behind the seawall is determined as minor structures as identified below, which will not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.

**Special Management Area Determination (SMA Minor Permit) for Snack Shack:**

1. New accessory outdoor dining and picnic areas and landscaping improvements:
  - a. Outside of the 20-foot shoreline setback area:

- i. Snack Shack
- ii. Use of a temporary pop-up food booth tent (to be removed upon securing a Certificate of Occupancy for the Snack Shack)

According to Hawai'i Revised Statutes (HRS) Chapter 205A-22 and PC Rule No. 9-4(e)(1)(E) and 9-4(e)(1)(B), "development" includes "*Construction, reconstruction, demolition, or alteration of the size of any structure*" and "*Grading, removing, dredging, mining or extraction of any materials,*" respectively. Therefore, we have determined that the proposed Snack Shack and the temporary pop-up food booth tent are considered "development" and require a review against the SMA rules and regulations and require an SMA Minor Permit. Further, we find that the proposed additions will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA.

Based on the above and pursuant to Planning Commission Rule Section 9-10(e), the enclosed Special Management Area Minor Permit No. 18-000383 is hereby issued for the proposed Snack Shack and the temporary pop-up food booth tent. Please note that it is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

- b. Within the 20-foot shoreline setback area:
  - i. Installation of a lawn picnic area
  - ii. Picnic tables with portable umbrellas

Planning Department (PD) Rules of Practice and Procedure, Rule 11-7(a) states that "*The following structures or activities may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department:*"  
"(4) *A minor structure or activity approved in accordance with section 11-8.*"

PD Rule 11-3(e) states that a "*Minor structure*" shall not alter the existing grade of the shoreline setback area and shall be limited to landscape features (i.e., benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, etc.); walkways for access; and sprinkler systems.

According to Section 11-8, "*A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.*" Further 11-9(b) states that "*Minor structures and activities shall be completed within one year from the date of the Planning Department's minor structure or activity determination or from the approval date of the last discretionary permit, whichever is last.*"

We find that the proposed landscape and picnic features is determined to be minor structures as identified above, which will not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.

Therefore, pursuant to PC Rule Section 9-10(e), Special Management Area, Minor Permit No. SMM 18-000383 is hereby issued for the project as described above. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

Proposed Best Management Practices (BMPs) include use of the south end of the commercial parking area adjacent to the restaurant as stockpiling and staging area for the dumpster for construction debris and the drop-off of materials and equipment. Installation of silt/dust control fencing with sandbags will be installed between the construction area and the mauka face of the seawall. Remaining demolition and landscape work will be done manually or with hand-held power tools. Material forklifts, hoisting equipment and construction crews will not enter into the 20-foot shoreline setback area, but from the restaurant's back-of-house.

While further review against the Special Management Area (SMA) rules and regulations will not be required, all other applicable Zoning and Building Code requirements must be satisfied. Additionally, this determination of exemption from the SMA definition of development is subject to compliance with 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. Construction of the proposed development shall be completed within one (1) year from the effective date of approval of this exemption.
4. All construction shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
5. Disposal of waste material is subject to the requirements of Chapter 20 - Refuse, of the Hawai'i County Code.
6. Best Management Practices regarding water quality must be strictly adhered to during construction activities.
7. The applicant must comply with the "Staging Area and BMP" as represented on Page 9 of the application as well as with the Site Notes on Mauka Landscape Plan Sheet C2.

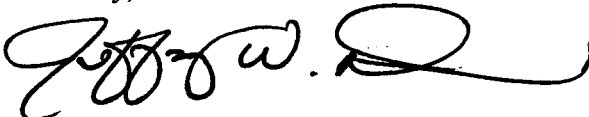
8. A construction and silt barrier meeting with the approval of the Planning Director shall be erected along the makai side of the seawall prior to the commencement of any land altering or construction activities and shall remain in place until the Building Permit final inspection by the Department of Public Works (or Planning Department). Once the barrier is in place, please contact Jeff Darrow of the Planning Department at (808) 961-8158 or Esther Imamura at (808) 961-8139. Please submit clear photographs of the barrier in place with the property information.
9. The locations of the construction/silt barrier must be shown and properly noted on all plans submitted with any permits required for any construction activities. The construction notes on the plans must include the following statement, "the construction barriers must be erected prior to any construction activities, and must remain in place until all activities have been completed."
10. The construction barrier must be properly maintained to serve its intended purpose and shall remain in place until all construction activities are completed.
11. The area makai of the project area shall be kept clear of any dust, rubbish or debris at all times.
12. Any further uses, activities or operations proposed for the subject property shall require further review and approval as provided under Chapter 205A of the Hawai'i Revised Statutes, and Rule 9 of Planning Commission Rules of Practice and Procedure.
13. 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.
14. In the unlikely event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, 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.
15. 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 determination; 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).

16. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke this determination.

If you have questions, please feel free to contact Esther Imamura at (808) 961-8139.

Sincerely,



*For* MICHAEL YEE  
Planning Director

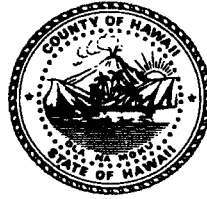
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Encl.: SMM No. 18-000383  
DPW Memorandum dated December 28, 2017  
Staging Area and BMP - Page 9  
Mauka Landscape Plan Sheet C2  
SSV 432  
SMM 81-34/SSV 613  
SMM 90-11

cc: Planning Department, Kona

Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

## County of Hawai'i

### PLANNING DEPARTMENT

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

### **Special Management Area Minor Permit No. 18-000383**

**Project:** Additions of a Snack Shack and a Temporary Pop-up Food Booth Tent with Accessory Elements

**Applicant:** Ulu Development LLC

**Owner:** Kanaka Mauka Holdings, LLC (Unit 38)/AOAO of Kona Magic Sands (Common Elements)

**Location:** North Kona, Hawai'i

**TMK(s):** (3) 7-7-008:022 and 7-7-008:022:038      **Land Area:** 47,916 square feet

<b>Applicant's Request</b>
----------------------------

**Project Description:**

1. The applicant proposes to construct a 275 square-foot Snack Shack with outdoor tables and chairs and portable shade umbrellas in the location of the previously removed unpermitted shed on the subject parcel.
2. Until the Issuance of a Certificate of Occupancy for the Snack Shack, a temporary pop-up food booth tent with accessory elements will be set up in the parking lot fronting Unit 38 and subsequently permanently removed. This 10'x10' tent will have a portable propane stove, 3-6' plastic tables for food prep and portable coolers for ice. Further, with the tent will be 2 umbrellas for shade, 2 36"x48" seating tables and 12 chairs. Hours of operation will be daily from 7:00 am to 7:00 pm.
3. **Purpose of Project:**  
The new structure and the temporary pop-up food booth tent will serve walk-up customers.
4. **Project Valuation:** \$48,500
5. **Determination:**  
According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4 (e)(1) (B) and (E) relating to Special Management Area (SMA), "Grading, removing, dredging, mining, or extraction of any materials" and "Construction, reconstruction, demolition or alteration of the size of any structure", respectively, are defined as "development." Therefore, the proposed addition of the Snack Shack and the temporary pop-up food booth tent is considered "development" and requires a review against the Special Management Area rules and regulations and requires an SMA Minor Permit.

### State and County Plans

1. **State Land Use District:** The parcel is designated Urban by the State Land Use Commission.
2. **General Plan:** The parcel is designated as Open by the Hawai‘i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The parcel is zoned Resort (V-1.25).
4. **Special Management Area:** The subject property is located entirely within the Special Management Area (SMA). However, the project area, as denoted on the January 15, 2018, Alterations and Addition Plan Sheet A1-b, is not located in a “shoreline area” as defined by Hawai‘i Revised Statutes (HRS) Chapter 205A-41.
5. **Flood Zone:** “VE” and “AE”

### 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.

<b>Findings</b>
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1. 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.
2. The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.
3. The estimated project cost of \$48,500 for new construction is not in excess of \$500,000.
4. The enclosed revised Department of Public Works, Engineering Division memorandum dated December 28, 2017, states the following:  
*“We have reviewed the subject application and our revised comments are as follows:*

1. *Contrary to the application, the subject work is located primarily within the Special Flood Hazard Area VE (Flood zone) as designated by the Flood Insurance Rate Map (FIRM). Work is also located within the Flood zone AE, mainly the curb work shown on the Mauka Landscape Plan, sheet C2.*
  2. *Any proposed work or existing work constructed after 1982 shall not cause a rise in the Base Flood Elevation (BFE). A no rise certificate is required for any proposed work within the VE or AE flood zones.*
  3. *The proposed Plank Style Fence and Double Gates shown on the attached Lanai Plan Sheet C3 are in compliance with Chapter 27 – Floodplain Management – of the Hawai‘i County Code (HCC) as shown.*
  4. *The stem wall shown in Exhibit 6 of the SMA application is acceptable as revised in the attached Alterations & Addition Plan Sheet A1-b.*
  5. *All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting with the approval of DPW.*
  6. *Improvements, including those not mentioned above, in a floodplain will be subject to the requirements of Chapter 27 – Floodplain Management – of the HCC.*
  7. *All earthwork and grading shall conform to Chapter 10 – Erosion and sedimentation Control – of the HCC.”*
5. Pursuant to Planning Commission Rule Section 9-10(e), the Planning Director hereby approves the construction of the Snack Shack and the temporary pop-up food booth tent, subject to the applicant’s compliance with the conditions of approval as specified below.

<b>Conditions of Approval</b>
-------------------------------

**This SMA Minor Permit is 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. All construction shall comply with Chapter 27, Floodplain Management, of the Hawai‘i County code.
4. The applicant shall meet current minimum yards (setbacks) required by Chapter 25, Zoning, of the Hawai‘i County Code.

5. Prior to construction, the applicant(s), successor(s) or assign(s) 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. Plans shall include the 20-foot shoreline setback line and identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed project.
6. No features of the Snack Shack or the temporary pop-up food booth tent, such as roof overhangs, eaves, sunshades, sills, frames, beam ends or canopies and other similar features may extend into the 20-foot shoreline setback area.
7. Best Management Practices regarding water quality must be strictly adhered to during construction activities.
8. Construction of the proposed Snack Shack and the temporary pop-up food booth tent shall be completed within two (2) years from the effective date of this permit. Permanent removal of the temporary pop-up food booth tent will occur concurrent with the issuance of the Certificate of Occupancy for the Snack Shack.
9. A construction and silt barrier meeting with the approval of the Planning Director shall be erected along the makai side of the seawall prior to the commencement of any land altering or construction activities and shall remain in place until the Building Permit final inspection by the Department of Public Works (or Planning Department.) Once the barrier is in place, please contact Jeff Darrow of the Planning Department at (808) 961-8158 or Esther Imamura at (808) 961-8139. Please submit clear photographs of the barrier in place with the property information.
10. The locations of the 20-foot shoreline setback line and the construction/silt barrier must be shown and properly noted on the plans submitted with any permits required for any construction activities. The construction notes on the plans must include the following statement, "the construction/silt barriers must be erected prior to any construction activities, and must remain in place until all activities have been completed."
11. The construction barrier must be properly maintained to serve its intended purpose and shall remain in place until all construction activities are completed.
12. No activity or storage of materials and equipment shall occur within the 20-foot shoreline setback area.
13. The disposal of waste material is subject to the requirements of Chapter 20 - Refuse, of the Hawai'i County Code and may require a Landfill Disposal Permit from the Department of Environmental Management, Solid Waste Division.
14. Any further uses, activities or operations proposed for the subject property shall require further review and approval as provided under Chapter 205A of the Hawai'i Revised Statutes, and Rule 9 of Planning Commission Rules of Practice and Procedure. Should

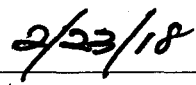
the cost of any new activities or operations not included in the subject proposal but related to the subject undertaking move the total valuation of the project over \$500,000, this permit will be deemed void and a Special Management Area "Major" Use Permit will be required for the project.

15. 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.
16. In the unlikely event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, 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.
17. 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.

If you have any questions, please feel free to contact Esther Imamura at (808) 961-8139.

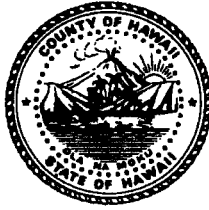
APPROVED:

  
MICHAEL YEE  
Planning Director

  
Date

Harry Kim  
Mayor

Wil Okabe  
Managing Director



Allan G. Simeon, P.E.  
Acting Director

Merrick H. Nishimoto  
Acting Deputy Director

**County of Hawai'i**  
**DEPARTMENT OF PUBLIC WORKS**

Aupuni Center  
101 Pauahi Street, Suite 7 · Hilo, Hawai'i 96720-4224  
(808) 961-8321 · Fax (808) 961-8630  
public\_works@hawaiiicounty.gov

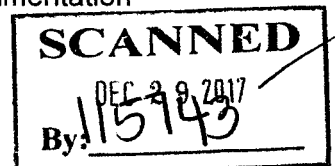
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PLANNING DEPARTMENT  
COUNTY OF HAWAII

**MEMORANDUM**

**Date:** December 28, 2017  
**To:** Michael Yee, Planning Director  
**From:** Department of Public Works, Engineering Division *My*  
**Subject:** Special Management Area Use Permit Assessment Application (SAA 17-001545)  
Applicant: Ulu Development, LLC  
Land Owner: Kanaka Mauka Holdings, LLC (Unit 38)  
Tax Map Key: (3) 7-7-008:022, North Kona, Hawaii

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

1. Contrary to the application, the subject work is located primarily within the Special Flood Hazard Area VE (Flood zone) as designated by the Flood Insurance Rate Map (FIRM). Work is also located within the Flood zone AE, mainly the curb work shown on the Mauka Landscape Plan, sheet C2.
2. Any proposed work or existing work constructed after 1982 shall not cause a rise in the Base Flood Elevation (BFE). A no rise certificate is required for any proposed work within the VE or AE flood zones.
3. The proposed Plank Style Fence and Double Gates shown on the attached Lanai Plan Sheet C3 are in compliance with Chapter 27 – Floodplain Management – of the Hawaii County Code (HCC) as shown.
4. The stem wall shown in Exhibit 6 of the SMA application is acceptable as revised in the attached Alterations & Addition Plan Sheet A1-b.
5. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting with the approval of DPW.
6. Improvements, including those not mentioned above, in a floodplain will be subject to the requirements of Chapter 27 – Floodplain Management – of the HCC.
7. All earthwork and grading shall conform to Chapter 10 – Erosion and Sedimentation Control – of the HCC.



Should there be any questions concerning this matter, please feel free to contact Natalie Whitworth of our Kona Engineering Division office at 323-4853.

NW

Copy: ENG-HILO/KONA

C3







2. New Snack Shack: \$58,000 (structural, electrical, plumbing, mechanical, and doors and windows).
3. New Temporary Snack Cart Trailer on Wheels and equipment: \$14,000

**H. Shoreline Certification:** The Applicant requests a waiver of a shoreline certification since no activity is proposed on the existing CRM seawall, which has been found to be structurally sound [FN 5] (**Exhibit 7**).

**I. Staging Area and BMP:** The south end of the commercial parking area adjacent to Unit 38 will be utilized as the stockpiling and staging area for the dumpster for construction debris, and the drop-off of materials and equipment. No material and equipment will enter into the 20-ft. shoreline setback area. The stockpiling of construction material will not be located in drainage ways or other area of concentrated flows, if any. Best Management Practices will be implemented, to include the installation of silt/dust control fencing with sandbags between the construction area and the ocean waters with sand bags<sup>9</sup> and parking lot area to prevent any construction elements and surface runoff impacts to the near shore resources. Sediment trapping devices such as fencing, traps, basins or barriers shall be used down slope of all distributed areas and around the base of all material stockpiles. All on-site and off-site storm drains which may receive runoff from the site shall be fitted with an inlet protection device. All remaining demolition and landscaping work will be done manually or with hand-held power tools. Material forklifts and hoisting equipment may be utilized, but shall not enter into the 20-ft. shoreline setback area (**Exhibit 5**, Sheet C2 - BMP checklist). All construction debris will be placed in containers for removal and transporting to the County landfill. No construction vehicles will remain on-site after construction hours of operation which are proposed from 7:00 am to 5:00 pm, Monday to Friday. Construction crews will be entering the Project site from the restaurant's back-of-house.

### **III. STATEMENT OF OBJECTIVE**

Section 9-10, "*Assessment*", of the Rules of the Practice and Procedure of the Planning Commission, provides that:

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will: a) exceed \$125,000<sup>10</sup> in valuation; or b) have a

<sup>9</sup> Installed on October 30, 2017 (**Exhibit 6** photograph of construction barrier).

<sup>10</sup> The valuation increased to \$500,000 by Act 153, SLH 2011, amending Section 205A-22, HRS.

# SITE NOTES

## In Shoreline setback area (SSA):

- All demolition & landscaping to be done manually or with hand-held power tools;
- no heavy equipment used for demolition or landscaping;
- Materials forklift & hoisting equipment shall be allowed.
- Refer to Best Management Practices (BMP) below.

## Best Management Practices (BMP) Checklist for Small Projects

**Stabilized Construction Entrance**  
All points of access and ingress to a site shall be protected with a stabilized construction entrance.

**Stockpiles**  
Stockpiles shall not be located in drainage ways or other areas of concentrated flows. Sediment trapping devices such as fences, berms, basins or barriers shall be used around the base of all stockpiles.

**Dust Control**  
Dust control should be applied to reduce dust emissions. The Contractor, at his own expense, shall keep the project area and surrounding area free from dust nuisance. The work shall be in conformance with the air pollution control standards contained in the Hawaii Administrative Rules Chapter 11-60, Air Pollution Control.

**Sediment Control - Excavations for HWS**  
Sediment trapping devices such as fences, traps, basins or barriers shall be used down slope of all disturbed areas and around the base of all material stockpiles.

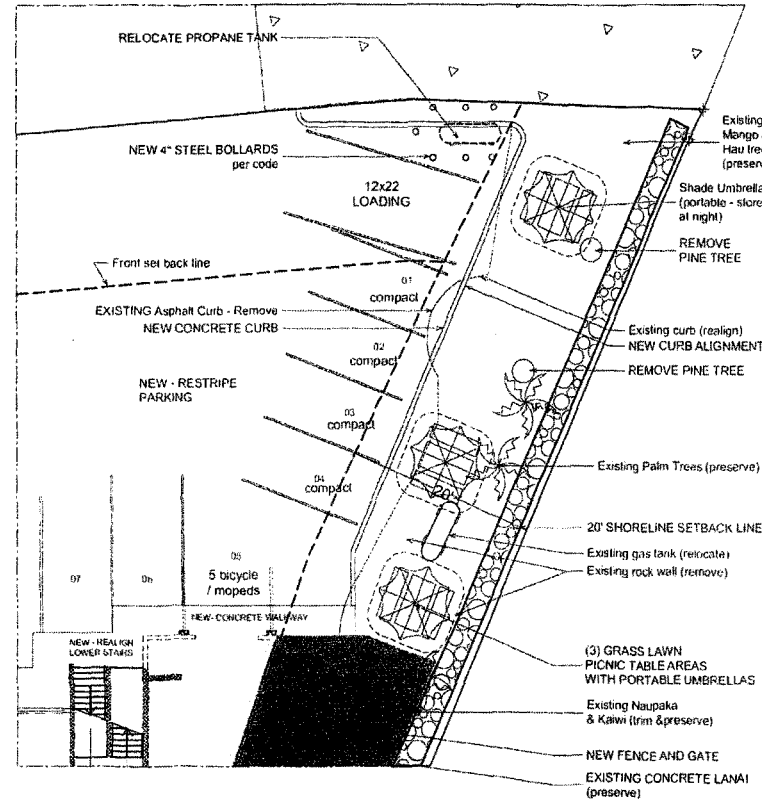
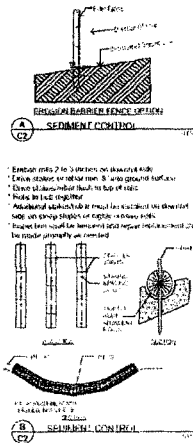
**Slope Protection**  
Surface flow from above an exposed slope shall not be allowed to flow over the slope without protection. Slope protection shall be used on areas with slopes greater than 50% and on areas of moderate slopes that are prone to erosion.

**Erosion Protection**  
All storm drain outlets on site, and those offsite which may receive runoff from the site shall use an erosion protection device.

**Temporary Stabilization**  
It is not required when the disturbed area will be worked within a 14 day period. Stabilization is required for disturbed areas at final grade and for those areas that will not be worked within a 14 day period.

**Permanent Stabilization**  
All disturbed areas shall be permanently stabilized prior to removing erosion and sediment control measures.

**Archaeological Preservation**  
In the event any previously unidentified historic or burial objects are discovered during construction work, shall immediately stop and the State Historic Preservation Office or the Dept. of Land and Natural Resources shall be advised. Work shall not resume until approved by SHPO and/or other relevant agencies.



## MAUKA LANDSCAPE PLAN

koa  
KOA ARCHITECTS, LLC



11-11-2017  
11-11-2017  
11-11-2017

## MAGICS BEACH GRILL

Development LLC  
77-5452 Ali Dr. Kailua Kona 96740  
TNR 77-006 022-0038

DATE 11/21/2017  
ISSUE SMAA PLAN

C2

PLANNING COMMISSION

Planning Department  
County of Hawaii  
Hilo, Hawaii

Application for VARIANCE	)	
by	)	
LE RENDEZ-VOUS, INC/	)	
ROGER BRACALI	)	
from	)	
SHORELINE SETBACK RULES AND	)	Variance No. 432
REGULATIONS	)	
in	)	
Pahoehoe 2nd, North Kona, Hawaii	)	
<hr/>		

VARIANCE PERMIT

The County Planning Commission at a duly held public hearing on February 13, 1975 considered the application of LE RENDEZ-VOUS/ ROGER BRACALI for a variance from Rule 8, Shoreline Setback Rules and Regulations, Section 8.7.2, Chapter 205, Hawaii Revised Statutes, as Amended, more specifically to allow the installation of sliding glass doors and improvements for restroom facilities to portions of the existing Kona Magic Sands Condominium building situated within the shoreline setback area at Pahoehoe 2nd, North Kona, Hawaii, Tax Map Key 7-7-08:22.

The Commission has found that:

The variance request would not be inconsistent with the intent and purpose of the Shoreline Setback Rules and Regulations. It is also determined that the proposed improvements would be in the best public interest in regard to the customers of the restaurant and the tenants of the condominium units. A restaurant already exists on the subject property. The proposed improvements will be within the existing roof line.

The existing restaurant is presently not enclosed and is often subjected to wind and ocean spray and salt. Therefore, the installation of the sliding glass storm doors under the existing roof line would, in essence, help to protect the restaurant and its customers from these natural elements.

In regard to the restroom facilities for the restaurant use, they are presently situated within a breezeway and not within the confines of the existing restaurant area. Since the restaurant area will be enclosed with the glass storm doors, the construction of the restrooms and related improvements within the restaurant's existing storage area would in essence offer more convenience and comfort to the users.

It is further determined that granting the subject variance will not necessarily result in an additional structural protrusion into the shoreline setback area than already exists. The improvements shall be within the existing roof line. In addition, the sliding glass doors, by virtue of their design, shall have minimum visual impact.

In light of the above, it is determined that the granting of the requested variance will not be materially detrimental to the public welfare, but would in effect, be in the best public interest - in this particular case, the patrons of the restaurant, and the tenants of the condominium units.

Therefore, the Commission hereby grants to the applicant a variance to allow the installation of sliding glass doors and improvements for restroom facilities to portions of the existing Kona Magic Sands Condominium building situated within the shoreline setback area, pursuant to the authority vested in it by Section 8.9 of said Rules and Regulations, subject to the following conditions that:

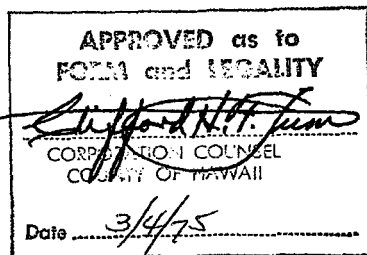
1. Construction of the proposed improvements, namely the sliding glass storm doors, and the restroom area, commence within one (1) year from the date of approval of the variance request.
2. All other applicable rules and regulations, including the 'Plan Approval' process be complied with.

Should these conditions not be met, the variance shall be deemed null and void.

The effective date of this permit shall be from February 13, 1975.

Dated at Hilo, Hawaii, this 1st day of March, 1975.

  
Arthur W. Martin, Chairman



CERTIFIED MAIL

December 8, 1981

Mr. Ben Harlow  
Kona Magic Sands Condominium  
76-6260 Koko Olua Way  
Kailua-Kona, Hawaii 96740

Dear Mr. Harlow:

Shoreline Setback Variance Application  
TMK: 7-7-08:22

The Planning Commission at its duly held public hearing on December 3, 1981, voted to approve your application, Shoreline Setback Variance Permit No. 613, to allow the replacement of an existing roof and construction of a mansard to the Kona Magic Sands Condominium building situated within the 20-foot shoreline setback area at Pahoehe 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

1. That the replacement of the roof on the second floor and the construction of a mansard within the setback area is not expected to have any adverse impacts on the environment. No endangered plant or animal species will be affected by the project as none are known to exist on the subject parcel or in the surrounding area. No impacts are likewise anticipated by the proposed project on archaeological/cultural resources in the area. In addition, the area was extensively altered during the construction of the condominium.

No impact on coastal waters is anticipated. The proposed concrete roof will not be increased in size. Therefore, no additional runoff should result from this action.

2. That hardship will be caused to the petitioner if the proposed improvements on that portion of the land within the shoreline setback area is not allowed. The existing iron roof has been subject to high winds which have resulted in damages to the roof. The proposed concrete roof will significantly reduce any future damages or repairs which may be needed. In addition, Kona Magic Sands

DEC 10 1981

Mr. Ben Harlow  
Page 2  
December 8, 1981

was developed prior to the establishment of the shoreline setback requirements. These requirements allow nonconforming structures situated within the shoreline setback area to be replaced, provided that no such nonconforming structure shall be substantially enlarged or changed to another nonconforming use.

Approval of this Shoreline Setback Variance request is subject to the following conditions:

1. That the applicant, Ben Harlow, shall be responsible for complying with all of the stated conditions of approval.
2. That plans be submitted to the Planning Department and final plan approval in accordance with Chapter 8 (Zoning Code), Hawaii County Code, as amended, be secured within one (1) year from the effective date of the Permit.
3. *Original under* *N/V* That construction shall commence within one (1) year from ~~the effective date of the permit~~ *date of Final Plan Approval* and shall be completed within one (1) year thereafter.
4. That the use of the new roof, other than to provide shelter, will require additional permits to include a variance permit to establish the new use.
5. That all other applicable rules, regulations and requirements be complied with.

Should any of the foregoing conditions not be met, this Shoreline Setback Variance may be deemed null and void.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



BERT H. NAKANO  
Chairman, Planning Commission

lgv

cc: Department of Public Works  
Department of Water Supply  
Kona Services Office

bcc: Land Use Controls Division, Planning Dept.

Larry S. Tanimoto  
Mayor

Duane Kanuha  
Director

William L. Moore  
Deputy Director



## Planning Department

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

### CERTIFIED MAIL

June 19, 1990

C

Mr. Michael J. Krochina, P.E.  
Krochina Engineering  
P.O. Box 4613  
Kailua-Kona, HI 96745

P

Dear Mr. Krochina:

Y

SPECIAL MANAGEMENT AREA (SMA) MINOR USE PERMIT NO. 90-11  
Applicant: Kona Magic Sands Condominium Association  
Tax Map Key 7-7-08:22 (PA-79)

Upon careful review of your SMA Use Permit request, we have found that it complies with the requirements for a Minor Permit set forth in Rule 9.7 of the Planning Commission's Rules and Regulations Relating to Special Management Area.

Accordingly, please find enclosed an SMA Minor Use Permit No. 90-11 to install reinforcing beams and posts to support existing concrete support beams (which are undergoing degradation) and to support first and second floor lanai roof structures, to replace second floor CMU lanai railings, and other minor work. The subject property is located on the makai side of Alii Drive in Kahului 1st, North Kona, Hawaii, TMK: 7-7-08:22.

Please note that the permit approval is also subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all conditions of approval.
2. The applicant shall comply with Shoreline Setback Variance No. 631 Condition No. 4 which restricts the use of the second story roof to that of providing shelter (to the lanai floor area below).
3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for Plan Approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which Final Plan Approval must be secured.

Mr. Michael J. Krochina, P.E.

Page 2

June 19, 1990

4. Construction of the proposed improvements shall commence within one year of the date of Final Plan Approval and shall be completed within one year thereafter.
5. All other applicable rules, regulations and requirements shall be complied with.
6. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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.
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: 1) 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; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and 4) 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 preceding conditions not be met the Planning Director shall initiate procedures to revoke this SMA Permit.

Should you have any questions regarding the above, please do not hesitate to contact this department at 961-8288.

Sincerely,

  
DUANE KANUHA  
Planning Director

FRW:lm  
Enclosures

cc: Chief Engineer w/ence.  
Kona Planning Dept. w/encs.  
SPA Section w/ence.



PLANNING DEPARTMENT - PLANNING COMMISSION  
COUNTY OF HAWAII  
Hilo, Hawaii

PERMIT NO. SMM 90-11

SPECIAL MANAGEMENT AREA MINOR USE PERMIT

The Planning Director completed on June 1, 19 90, an assessment on the application of KONA MAGIC SANDS CONDOMINIUMS ASSOCIATION for a Special Management Area (SMA) Minor Use Permit pursuant to Section 9.7.C., Rule 9 of the Planning Commission Rules Relating to Administrative Procedures, as amended. The

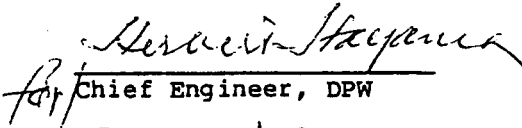
permit request is ~~for~~: To install reinforcing beams and posts to support existing concrete support beams (which are undergoing degradation) and to support first and second floor lanai roof structures, to replace second floor CMU lanai railings, and other minor work. The subject property is located on the makai side of Alii Drive in Kahului 1st, North Kona, Hawaii, TMK: 7-7-08:22


As indicated on the attached report, the Director finds that the proposed development is:

- 1) not in excess of \$65,000; and
- 2) will not significantly affect the SMA.

Therefore, with concurrence of the Chief Engineer, the Director hereby grants to the applicant a minor use permit under the authority vested in him by Section 9.7.C of said Rules, with the following condition(s) that:

SEE ATTACHED CONDITIONS

  
for Chief Engineer, DPW

  
Planning Director

Attachment

6257A-5/84

SMA Minor Permit No. 90-11  
KONA MAGIC SANDS CONDOMINIUMS ASSOCIATION  
Conditions

1. The applicant, its successors or assigns shall be responsible for complying with all conditions of approval.
2. The applicant shall comply with Shoreline Setback Variance No. 631 Condition No. 4 which restricts the use of the second story roof to that of providing shelter (to the lanai floor area below).
3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for Plan Approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which Final Plan Approval must be secured.
4. Construction of the proposed improvements shall commence within one year of the date of Final Plan Approval and shall be completed within one year thereafter.
5. All other applicable rules, regulations and requirements shall be complied with.
6. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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.
7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: 1) 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; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and 4) 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 preceding conditions not be met the Planning Director shall initiate procedures to revoke this SMA Permit.

BACKGROUND (SMA MINOR 90-11)

The applicant, Michael J. Krochina, representing the Kona Magic Sands Condominium Association, is proposing to install reinforcing beams and posts to support existing concrete support beams (which are undergoing degradation) and to support first and second floor lanai roof structures, to replace second floor CMU lanai railings, and other minor work. The subject property is located on the makai side of Alii Drive in Kahului 1st, North Kona, Hawaii, TMK: 7-7-08:22.

More specifically, the applicant proposes to work on the makai side, south end of the 3-story condominium structure, in the ground floor restaurant area and on the second floor lanai area of the apartments above (units 202, 203 and 204). Work will include:

- (1) Installation of 4 tubular steel posts in the restaurant area to support an added steel carrier beam which will in turn support the existing concrete carrier beams of the cantilevered second floor lanai above.
- (2) Installation of 2 additional steel posts to support the same lanai to the north.
- (3) Install 6 more steel posts above the 6 posts just noted, to support the makai side of the now-cantilevered second floor roof (now also in unauthorized use as a third floor lanai, hence in need of more support in order to be safe).
- (4) Remove and replace degrading second floor lanai CMU railings.
- (5) Modify a free-standing wall in the restaurant with shoji doors.
- (6) Minor ceiling and floor modifications.

The State Land Use classification of the subject parcel is Urban. The General Plan Land Use Allocation Guide (LUPAG) Map designates the area for resort use, which is reflected in the County zoning of Resort-1250 square feet (V-1.25).

Surrounding properties along the shore include the County's Magic Sands Beach Park to the south and a State park to the north, both zoned Open. Immediately mauka the land is zoned Resort-1250 square feet (V-1.25).

The Flood Insurance Rate Map (FIRM), prepared by the Federal Emergency Management Agency (FEMA), designates the subject site to be in two 100-year flood zone categories. The makai 30% or so is in the Coastal Flood Zone with Velocity (VE-12), and the remainder of the parcel is in the AE-12 Flood Hazard Area. The base flood elevation is 12 feet for each.

The entire property is built upon or landscaped, so there are no concerns about presence of historic sites or rare plants or animals. Rainfall at the subject site is between 25 and 30 inches.

The total cost of the proposed construction is estimated to be \$50,000.

Less than half of the proposed reconstruction falls within the 20-foot Shoreline Setback Area. This work is to include reinforcement of the second floor lanai roof previously allowed reconstruction under Shoreline Setback Variance No. 613; hence, it is to be allowed under that same variance. As such, no certified shoreline survey is required.

The Kona Magic Sands property was issued the following past approvals for construction related to the areas of the subject application:

Interim Zoning Variance No. 27 (6/15/65) permitted the use of the 3-story building for 37 residential units with a swimming pool and restaurant on the ground floor, makai side.

Shoreline Setback Variance No. 432 (2/13/75) allowed the restaurant to enclose the open makai lanai with sliding glass doors and to improve its restroom facilities.

Shoreline Setback Variance No. 613 (12/3/81) and SMA Minor Permit No. 81-34 (12/16/81) to allow the replacement of the sheet metal roof (which covers some of the makai side second floor lanais and is makai of the railings of the small third floor lanais) with a wood/concrete roof and the new construction of a mansard on the makai edge of the reconstructed roof. There was a variance and PA (No. 79) provision restricting the use of the reconstructed second floor roof to that of shelter unless a separate Shoreline Setback Variance was first obtained to establish the new use (i.e., lanai use). It is this second floor roof which is being reinforced by the subject application's construction.

Action since the last approval which affects the structure portions under the subject application includes a certified letter (1/24/89) from the Department of Public Works, Building Division, ordering the condominium owners association to (1) either get a building permit for construction accomplished without permit, or (2) to remove the offending work. The latter was the installation of sliding doors and removal of the third floor makai lanai railings, which allowed the occupants to use the second floor lanai roof as a third floor lanai, contrary to provisions of the original Building Permit (and SSV No. 613). To date, no building permit has been taken out to either legitimize or correct the situation.

## RECOMMENDATION

An SMA Minor Permit is hereby approved based on the following findings:

1. The total evaluation of the project will not exceed \$65,000; and
2. The proposal will not result in a significant adverse effect on the Special Management Area.

The proposed project is not expected to have any adverse environmental or ecological effects. As conditioned, the installation of steel beams and posts to support existing concrete support beams for the first floor makai lanai roof, attachment of a new steel support post to reinforce the second floor lanai roof and removal and replacement the CMU railings on the second floor lanai is not expected to have any adverse historical effects.

The proposed action is consistent with the Objectives, Policies, and SMA Guidelines. These were established to provide guidance for the preservation, protection, and development of coastal resources of the State and County. They identify several areas of management concern including historic, recreation, scenic resources, coastal ecosystems, economic use, and coastal hazards. Due to the limited nature of the project and given the proposed conditions, it is determined that granting of this request will not impact on the identified resources.

The proposed construction is consistent with the present Resort-Hotel zoned district as well as the General Plan "Resort" designation.

Based on the above, it is determined that the granting of the request will not create a significant adverse effect on the environment and, therefore, will not be contrary to the purpose and intent of Chapter 205-A, HRS, relating to Coastal Zone Management; Rule 9 of the Planning Commission relating to the Special Management Area; the Hawaii County Zoning Code; or the General Plan.

A Special Management Area Minor Use Permit is approved subject to the following conditions:

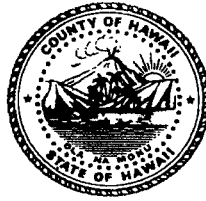
1. The applicant, its successors or assigns shall be responsible for complying with all conditions of approval.
2. The applicant shall comply with Shoreline Setback Variance No. 631 Condition No. 4 which restricts the use of the second story roof to that of providing shelter (to the lanai floor area below).
3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for Plan Approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which Final Plan Approval must be secured.
4. Construction of the proposed improvements shall commence within one year of the date of Final Plan Approval and shall be completed within one year thereafter.
5. All other applicable rules, regulations and requirements shall be complied with.
6. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the 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.

7. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: 1) 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; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and 4) 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 preceding conditions not be met the Planning Director shall initiate procedures to revoke this SMA Permit.



Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

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

April 3, 2018

Steven S.C. Lim, Esq.  
Carlsmith Ball LLP  
P.O. Box 686  
Hilo, HI 96721

Dear Mr. Lim:

**SUBJECT: Special Management Area Minor Permit No. 18-000383 (SMM 18-000383)**

**Applicant: Ulu Development LLC**

**Subject: Amendment to Add a Rock Wall with Bollard, a Grease  
Interceptor, and to Replace the Tent with a Portable Snack  
Cart on Wheels**

**TMK(s): (3) 7-7-008:022 and 7-7-008:022:0038, N. Kona, Hawai'i**

This is in response to your March 8, 2018, request to amend SMM 18-000383 to include a rock wall with bollard as well as a grease interceptor. Further, the tent will be replaced by a portable snack cart on wheels which will be removed upon securing a Certificate of Occupancy for the Snack Shack.

SMM 18-000383 allowed for the "after-the fact" proposed interior and exterior repair, maintenance, alterations and additions, including a Snack Shack. Proposed additions include a 4'-6' height rock wall with 4" steel bollard surround for the relocated propane tank at a valuation \$1,800, and a 500 gallon grease interceptor or replacement with a 1,000 gallon grease interceptor, with a proposed valuation of \$2,000 and \$3,000. Also proposed is replacing the \$4,500 temporary pop-up food booth tent with a \$21,000 portable snack cart on wheels.

In calculating the cumulative value of the development, however, we are not including the grease interceptor as we consider that to be maintenance. Therefore, with the original project cost of \$48,500, the addition of \$1,800 and \$16,500 results in a new total cost of \$66,800 which does not exceed the \$500,000 threshold for the SMA Minor Permit. Further, as the proposed additions will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA, the amendment to SMM 18-000383 is approved.

APR 03 2018

Steven S.C. Lim, Esq.  
Carlsmith Ball LLP  
April 3, 2018  
Page 2

While further review against the Special Management Area (SMA) rules and regulations will not be required, all other applicable Zoning and Building Code requirements must be satisfied. Additionally, it is the landowner's responsibility to adhere to all conditions set forth by the enclosed SMM 18-000383.

If you have questions, please feel free to contact Esther Imamura at (808) 961-8139.

Sincerely,



*For*

MICHAEL YEE  
Planning Director

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Encl.: SMM No. 18-000383

cc: Planning Department, Kona

Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

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

**Special Management Area Minor Permit No. 18-000383**

**Project:** Additions of a Snack Shack and a Temporary Pop-up Food Booth Tent with Accessory Elements  
**Applicant:** Ulu Development LLC  
**Owner:** Kanaka Mauka Holdings, LLC (Unit 38)/AOAO of Kona Magic Sands (Common Elements)  
**Location:** North Kona, Hawai'i  
**TMK(s):** (3) 7-7-008:022 and 7-7-008:022:038      **Land Area:** 47,916 square feet

**Applicant's Request**

**Project Description:**

1. The applicant proposes to construct a 275 square-foot Snack Shack with outdoor tables and chairs and portable shade umbrellas in the location of the previously removed unpermitted shed on the subject parcel.
2. Until the Issuance of a Certificate of Occupancy for the Snack Shack, a temporary pop-up food booth tent with accessory elements will be set up in the parking lot fronting Unit 38 and subsequently permanently removed. This 10'x10' tent will have a portable propane stove, 3-6' plastic tables for food prep and portable coolers for ice. Further, with the tent will be 2 umbrellas for shade, 2 36"x48" seating tables and 12 chairs. Hours of operation will be daily from 7:00 am to 7:00 pm.
3. **Purpose of Project:**  
The new structure and the temporary pop-up food booth tent will serve walk-up customers.
4. **Project Valuation:** \$48,500
5. **Determination:**  
According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4 (e)(1) (B) and (E) relating to Special Management Area (SMA), "*Grading, removing, dredging, mining, or extraction of any materials*" and "*Construction, reconstruction, demolition or alteration of the size of any structure*", respectively, are defined as "development." Therefore, the proposed addition of the Snack Shack and the temporary pop-up food booth tent is considered "development" and requires a review against the Special Management Area rules and regulations and requires an SMA Minor Permit.

### State and County Plans

1. **State Land Use District:** The parcel is designated Urban by the State Land Use Commission.
2. **General Plan:** The parcel is designated as Open by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The parcel is zoned Resort (V-1.25).
4. **Special Management Area:** The subject property is located entirely within the Special Management Area (SMA). However, the project area, as denoted on the January 15, 2018, Alterations and Addition Plan Sheet A1-b, is not located in a "shoreline area" as defined by Hawai'i Revised Statutes (HRS) Chapter 205A-41.
5. **Flood Zone:** "VE" and "AE"

### 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.

<b>Findings</b>
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1. 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.
2. The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.
3. The estimated project cost of \$48,500 for new construction is not in excess of \$500,000.
4. The enclosed revised Department of Public Works, Engineering Division memorandum dated December 28, 2017, states the following:

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

1. *Contrary to the application, the subject work is located primarily within the Special Flood Hazard Area VE (Flood zone) as designated by the Flood Insurance Rate Map (FIRM). Work is also located within the Flood zone AE, mainly the curb work shown on the Mauka Landscape Plan, sheet C2.*
  2. *Any proposed work or existing work constructed after 1982 shall not cause a rise in the Base Flood Elevation (BFE). A no rise certificate is required for any proposed work within the VE or AE flood zones.*
  3. *The proposed Plank Style Fence and Double Gates shown on the attached Lanai Plan Sheet C3 are in compliance with Chapter 27 – Floodplain Management – of the Hawai‘i County Code (HCC) as shown.*
  4. *The stem wall shown in Exhibit 6 of the SMA application is acceptable as revised in the attached Alterations & Addition Plan Sheet A1-b.*
  5. *All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and the recommended drainage system shall be constructed meeting with the approval of DPW.*
  6. *Improvements, including those not mentioned above, in a floodplain will be subject to the requirements of Chapter 27 – Floodplain Management – of the HCC.*
  7. *All earthwork and grading shall conform to Chapter 10 – Erosion and sedimentation Control – of the HCC.”*
5. Pursuant to Planning Commission Rule Section 9-10(e), the Planning Director hereby approves the construction of the Snack Shack and the temporary pop-up food booth tent, subject to the applicant’s compliance with the conditions of approval as specified below.

<b>Conditions of Approval</b>
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**This SMA Minor Permit is 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. All construction shall comply with Chapter 27, Floodplain Management, of the Hawai‘i County code.
4. The applicant shall meet current minimum yards (setbacks) required by Chapter 25, Zoning, of the Hawai‘i County Code.


5. Prior to construction, the applicant(s), successor(s) or assign(s) 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. Plans shall include the 20-foot shoreline setback line and identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed project.
  6. No features of the Snack Shack or the temporary pop-up food booth tent, such as roof overhangs, eaves, sunshades, sills, frames, beam ends or canopies and other similar features may extend into the 20-foot shoreline setback area.
  7. Best Management Practices regarding water quality must be strictly adhered to during construction activities.
  8. Construction of the proposed Snack Shack and the temporary pop-up food booth tent shall be completed within two (2) years from the effective date of this permit. Permanent removal of the temporary pop-up food booth tent will occur concurrent with the issuance of the Certificate of Occupancy for the Snack Shack.
  9. A construction and silt barrier meeting with the approval of the Planning Director shall be erected along the makai side of the seawall prior to the commencement of any land altering or construction activities and shall remain in place until the Building Permit final inspection by the Department of Public Works (or Planning Department.) Once the barrier is in place, please contact Jeff Darrow of the Planning Department at (808) 961-8158 or Esther Imamura at (808) 961-8139. Please submit clear photographs of the barrier in place with the property information.
  10. The locations of the 20-foot shoreline setback line and the construction/silt barrier must be shown and properly noted on the plans submitted with any permits required for any construction activities. The construction notes on the plans must include the following statement, "the construction/silt barriers must be erected prior to any construction activities, and must remain in place until all activities have been completed."
  11. The construction barrier must be properly maintained to serve its intended purpose and shall remain in place until all construction activities are completed.
  12. No activity or storage of materials and equipment shall occur within the 20-foot shoreline setback area.
  13. The disposal of waste material is subject to the requirements of Chapter 20 - Refuse, of the Hawai'i County Code and may require a Landfill Disposal Permit from the Department of Environmental Management, Solid Waste Division.
  14. Any further uses, activities or operations proposed for the subject property shall require further review and approval as provided under Chapter 205A of the Hawai'i Revised Statutes, and Rule 9 of Planning Commission Rules of Practice and Procedure. Should
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the cost of any new activities or operations not included in the subject proposal but related to the subject undertaking move the total valuation of the project over \$500,000, this permit will be deemed void and a Special Management Area "Major" Use Permit will be required for the project.

15. 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.
16. In the unlikely event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, 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.
17. 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.

If you have any questions, please feel free to contact Esther Imamura at (808) 961-8139.

APPROVED:

  
\_\_\_\_\_  
MICHAEL YEE  
Planning Director

  
\_\_\_\_\_  
Date