

## County of Hawai'i

### PLANNING COMMISSION

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

August 14, 2009

Mr. Eric Von Platen Luder  
Olu Kai Ltd.  
75-5828 Kahakai Road  
Kailua-Kona, HI 96740

Dear Mr. Von Platen Luder:

#### **Shoreline Setback Variance No. 654**

#### **Special Management Area Use Permit No. 396**

Request: Five-Year Time Extension for Condition No. 3 (Complete Construction)

Applicant: Olu Kai, Ltd.

Tax Map Key: 7-5-9:14, 15, 17, 18

The Leeward Planning Commission at its duly held public hearing on July 24, 2009, voted to approve your request for amendments to conditions concerning time limit and related conditions for Special Management Area (SMA) No. 396 and Shoreline Setback Variance (SSV) No. 654. SMA 396 allowed the expansion of the existing Huggo's Restaurant and related improvements, and SSV 654 allowed some of the restaurant improvements within the 20-foot shoreline setback area. The properties involved are the site of the existing Huggo's Restaurant complex located on the makai side of Ali'i Drive, adjacent to the Royal Kona Resort, Kailua-Kona, North Kona, Hawai'i.

Approval of **Special Management Area (SMA) Use Permit No. 396** is based on the following:

The applicant is requesting an amendment for a 5-year time extension to comply with Condition No. 3 (complete construction) of Special Management Area Use Permit No. 396, which states:

"Construction of the proposed restaurant expansion shall be completed within 5 years from the effective date of this permit. Prior to commencing construction of the proposed project, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved driveway access, parking

stalls and landscaping in compliance with the Zoning Code and Planning Department Rule No. 17 (Landscaping Rule) associated with the proposed use.”

Special Management Area Use Permit No. 396 and Shoreline Setback Variance No. 654 were approved by the Planning Commission on November 5, 1999, to allow the expansion of the existing Huggo’s Restaurant with the construction of second and third stories above the existing single story building; and off-site improvements which includes parking area expansion, extension of shoreline promenade, and improvements to Kahakai Road.

**The amendment request 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.** The applicant continues to face economic conditions that were unforeseen and beyond their control, which has delayed progress of the proposed restaurant expansion. The applicant has expended significant capital to proceed with the restaurant expansion, including hiring a construction manager and contractors, and retaining engineering and architectural consultant services. Additionally, the applicant’s financing commitment has been deferred pending an improved economy. Based on the above information, it has been determined that non-compliance was a result of conditions that could not have been foreseen and were beyond the control of the applicant.

**The granting of the amendment request would not be contrary to the General Plan or Zoning Code.** The request continues to be consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Resort Node, which includes a mix of visitor-related uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), single family and multiple family residential units, golf courses and other typical resort recreational facilities, resort commercial complexes and other support services. Additionally, the request continues to be consistent with the applicable goals, policies, standards and courses of action of the Economic, Land Use and Land Use-Commercial Development Elements of the General Plan. Lastly, the request is consistent with the current zoning for the property, which is Resort-Hotel (V-.75). The Resort-Hotel zoned district allows for restaurants as a permitted use.

**The granting of the amendment request would not be contrary to the original reasons for the granting of the permit.** The amendment request continues to be consistent with the original reasons for approving the Special Management Area Use Permit. It was originally determined that 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 improvements are adding to the existing

Mr. Eric Von Platen Luder

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restaurant structure and to the parking lot area. The proposed development continues to be consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.

Lastly, the applicant will continue to be required to comply with all conditions of approval for Special Management Area (SMA) Use Permit No. 396.

Based on the above findings, the amendment request to allow a 5-year time extension is approved subject to the following conditions (material to be added is underlined and material to be deleted is bracketed and struck through):

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ~~[ninety (90)]~~one-hundred and eighty days from the effective date of this ~~[permit]~~amendment.
3. Construction of the proposed restaurant expansion shall be completed within 5 years from the effective date of this ~~[permit]~~amendment. Prior to commencing construction of the proposed project, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved driveway access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule No. 17 (Landscaping Rule) associated with the proposed use.
4. Kahakai Road shall be improved along the property's frontage with curb, gutter, and sidewalk construction and minimal pavement improvements meeting with the approval of the Department of Public Works.
5. All structural improvements within the flood zone must comply with Chapter 27 of the Hawai'i County Code.
6. Any physical improvements below the base flood elevation will require a flood study and compliance with the National Flood Insurance Program Regulations meeting with the approval of the Department of Public Works.

7. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
8. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
9. The applicant shall connect the existing and/or proposed structures to the public sewer and install a grease interceptor meeting with the approval of the Department of Environmental Management prior to Certificate of Occupancy.
- ~~[8-]~~10. Should any remains of historic sites, such as walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
- ~~[9-]~~11. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed development.
- ~~[10-]~~12. 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.
- ~~[11-]~~13. ~~[An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:~~
  - ~~A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.~~
  - ~~B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.~~
  - ~~C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.~~
  - ~~D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).~~ If the applicant

should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.

Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

Approval of **Shoreline Setback Variance (SSV) No. 654** is based on the following:

The applicant is requesting an amendment for a 5-year time extension to comply with Condition No. 3 (complete construction) of Shoreline Setback Variance No. 654, which states:

“Construction of the proposed restaurant expansion shall be completed within 5 years from the effective date of this permit. Prior to commencing construction of the proposed project, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved driveway access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule No. 17 (Landscaping Rule) associated with the proposed use.”

Special Management Area Use Permit No. 396 and Shoreline Setback Variance No. 654 were approved by the Planning Commission on November 5, 1999, to allow the expansion of the existing Huggo’s Restaurant with the construction of second and third stories above the existing single story building; and off-site improvements which includes parking area expansion, extension of shoreline promenade, and improvements to Kahakai Road.

**The amendment request is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.** The applicant continues to face economic conditions that were unforeseen and beyond their control, which has delayed progress of the proposed restaurant expansion. The applicant has expended significant capital to proceed with the restaurant expansion, including hiring a construction manager and contractors, and retaining engineering and architectural consultant services. Additionally, the applicant’s financing commitment has been deferred pending an improved economy. Based on the above information, it has been determined that non-compliance was a result of conditions that could not have been foreseen and were beyond the control of the applicant.

**The granting of the amendment request would not be contrary to the General Plan or Zoning Code.** The request continues to be consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Resort Node, which includes a mix of visitor-related uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), single family and multiple

family residential units, golf courses and other typical resort recreational facilities, resort commercial complexes and other support services. Additionally, the request continues to be consistent with the applicable goals, policies, standards and courses of action of the Economic, Land Use and Land Use-Commercial Development Elements of the General Plan. Lastly, the request is consistent with the current zoning for the property, which is Resort-Hotel (V-.75). The Resort-Hotel zoned district allows for restaurants as a permitted use.

**The granting of the amendment request would not be contrary to the original reasons for the granting of the permit.** The amendment request continues to be consistent with the original reasons for approving the Shoreline Setback Variance. Hardship would be caused to the applicant if the proposed improvements are not allowed within the shoreline setback area and the applicant would be deprived of reasonable use of their land. This request continues to be reasonable, considering the use of land, shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to the applicant and adjacent property owner's health and safety. The request also continues to be a practicable alternative which best conforms to the purpose of this rule.

The property is situated makai of Ali'i Drive and abuts the shoreline. The development has a total combined area of 35,679 square feet of improved lands. The shoreline was certified on June 26, 1998 and re-certified on June 25, 1999. The shoreline survey certifications were not appealed.

It should be pointed out a portion of the restaurant structure lies makai of the certified shoreline and is situated within the State Land Use Conservation District, which is under the jurisdiction of the Board of Land and Natural Resources. The existing structure was constructed in the late 1960's in a location that was then mauka of the certified shoreline established at that time. Currently, approximately 800 square feet of the existing restaurant lies makai of the certified shoreline, and approximately 500 square feet of the proposed floor space expansion would lie makai of the certified shoreline (airspace). The proposed improvements will be structurally independent of the existing building and no part of the proposed project will make contact with the ground makai of the certified shoreline. The applicant will continue to be required to comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed development, including any permits that may be required from the Board of Land and Natural Resources for improvements makai of the certified shoreline.

Therefore, the applicant's request covers only that portion of the restaurant structure situated mauka of the certified shoreline, within the 20-foot Shoreline Setback area as well as within the Special Management Area.

Lastly, the applicant will continue to be required to comply with all conditions of approval for Shoreline Setback Variance No. 654.

Based on the above findings, the amendment request to SSV 654 to allow a 5-year time extension is approved subject to the following conditions (material to be added is underlined and material to be deleted is bracketed and struck through):

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ~~[ninety (90)]~~one hundred and eighty days from the effective date of this ~~[permit]~~amendment.
3. Construction of the proposed restaurant expansion shall be completed within 5 years from the effective date of this ~~[permit]~~amendment. Prior to commencing construction of the proposed project, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved driveway access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule No. 17 (Landscaping Rule) associated with the proposed use.
4. All structural improvements within the flood zone must comply with Chapter 27 of the Hawai'i County Code.
5. Any physical improvements below the base flood elevation will require a flood study and compliance with the National Flood Insurance Program Regulations meeting with the approval of the Department of Public Works.
6. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
7. Should any remains of historic sites, such as walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.

8. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed development.
9. 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.
10. ~~[An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:~~
  - ~~A. The non performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.~~
  - ~~B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.~~
  - ~~C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.~~
  - ~~D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).]~~If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.  
Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the requests as they may be subject to change given specific code and regulatory requirements of the affected agencies.

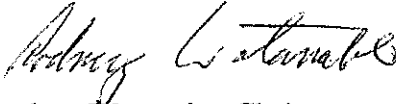


Mr. Eric Von Platen Luder

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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

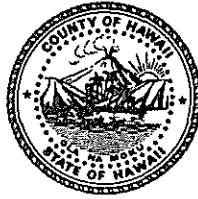


Rodney Watanabe, Chairman  
Leeward Planning Commission

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cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
Office of Planning, CZM Program  
Department of Land and Natural Resources-HPD  
DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Zoning Inspector – Kona  
Mr. Gilbert Bailado

Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
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CERTIFIED MAIL  
P 101 317 916

NOV 30 1999

Mr. Ted Baldau  
Alanui Enterprises  
P.O. Box 390628  
Kailua-Kona, HI 96739

Dear Mr. Baldau:

Shoreline Setback Variance Application (SSV 99-001) ✓ No. 654  
Request: Addition of Second and Third Stories to Existing Huggo's Restaurant  
Special Management Area Use Permit Application (SMA 99-003)  
Request: Expansion of Existing Huggo's Restaurant and Off-Site Improvements to  
Include Parking, Extension of Shoreline Promenade and Improvements to Kahakai Road  
Applicant: Olu Kai Ltd. by Eric Von Platen, Vice President  
Tax Map Key: 7-5-9:14, 15, 17, 18

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The Planning Commission at its duly held public hearing on November 5, 1999, voted to approve the above-referenced applications. Special Management Area (SMA) Use Permit 396 and Shoreline Setback Variance Permit No. 654 are hereby issued to allow the expansion of the existing Huggo's Restaurant with the construction of second and third story levels above the existing single story building; and off-site improvements which includes parking area expansion, extension of shoreline promenade, and improvements to Kahakai Road. The property is located at the intersection of Alii Drive and Kahakai Road adjacent to the Royal Kona Resort, Kailua, North Kona, Hawaii.

Approval of these requests are based on the following:

#### Shoreline Setback Variance

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of these

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structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks.

The Legislature, however, also recognized that certain activities and improvements may be required or constructed within the shoreline setback area for protection of certain shoreline properties. In recognizing this need, the Legislature authorized the respective authorities within the various counties, in this case the Planning Commission, to grant variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205-35(b) of the Hawaii Revised Statutes, and Section 8-14(b) of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations based on the following criteria for approval:

The Planning Director has determined that the Shoreline Setback Variance shall be processed in accordance with Rule 8, Section 8-14 (b)(3) which states: A variance may also be granted upon a finding that, based upon the record, the proposed structure or activity meets one of the following standards of this subsection:

(3) Hardship Standard.

- (A) A structure or activity may be granted a variance upon grounds of hardship only if:
  - (i) The applicant would be deprived of reasonable use of the land if required to comply fully with this rule; and
  - (ii) The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and
  - (iii) The request is the practicable alternative which best conforms to the purpose of this rule.

- (B) Before granting a hardship variance, the Commission must determine that the request is a reasonable use of the land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

The applicant is proposing to expand the existing single story wooden restaurant structure to include second and third story levels. The existing structure was constructed in the late 1960's in a location that was then landward of the certified shoreline established at that time. The proposed expansion is to provide for additional restaurant space as well as other commercial, retail and office uses. The total floor space for the restaurant is proposed for approximately 13,000 square feet. The existing ground floor level is approximately 4,100 square feet; the proposed second floor would be 5,970 square feet; and the third floor would be 2,830 square feet. According to the applicant, approximately 800 square feet of the existing restaurant lies makai of the certified shoreline, and approximately 500 square feet of the proposed floor space expansion would lie makai of the certified shoreline. It should be pointed out that the portion of the restaurant structure which lie makai of the certified shoreline is situated within the State Land Use Conservation District and is under the jurisdiction of the Board of Land and Natural Resources. Therefore, the applicant's request under consideration covers only that portion of the restaurant structure situated mauka of the certified shoreline, within the 20-foot Shoreline Setback area as well as within the Special Management Area.

In this Shoreline Setback Variance Application, the applicant proposes the following improvements within the 20-foot shoreline setback area: "The applicant seeks governmental approval to expand the existing single story wooden structure to include second and third story levels. The proposed improvements will be structurally independent of the existing building. No part of the proposed project will make contact with the ground makai of the certified shoreline. The existing structure was constructed in the late 1960's in a location that was then landward of the certified shoreline established at that time. As per current regulation regarding the location of the certified shoreline, the existing restaurant occupies an area of approximately 800 square feet beyond the certified shoreline. Current extension beyond the certified shoreline ranges from 3 feet towards the south end of the structure to 18 feet towards the restaurant's north end. The proposed project will add approximately 500 square feet of structure extending beyond the certified shoreline. This addition extends as much as 12 feet beyond the certified shoreline. The proposed seaward extension beyond the existing structure varies between 2 feet at the north end of the restaurant to 10 feet at the restaurant's south end. The proposed additions to the existing structure that extend seaward of the certified shoreline lay partially within existing Department

of Land and Natural Resources easements occupying approximately 230 square feet of the existing easements. Those portions of the existing structure and proposed additions to the existing structure beyond the certified shoreline and not addressed by existing easements will require additional agreements for use of airspace above the state land."

The property is situated makai of Alii Drive and abuts the shoreline. The development has a total combined area of 35,679 square feet of improved lands. The property is fully developed and was certified on June 26, 1998 and recertified on June 25, 1999. The shoreline survey certifications were not appealed. This request is reasonable considering the use of the land, shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to the applicant and adjacent property owners' health and safety.

Hardship will be caused to the applicant if the proposed improvements are not allowed within the shoreline setback area and the applicant would be deprived of reasonable use of their land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety. The natural shoreline processes will experience minimal interference, if any, from the proposed improvements. There may be some visual impact from the project, however, the surrounding property will be left in its present state. The proposed improvements are not anticipated to interfere with public access to shoreline areas as designed. There are no air quality monitoring stations in the West Hawaii Region. The existing noise generated in the area is coming from the noise from Alii Drive traffic at the mauka side of the property. The principal source of short term air quality and noise impacts associated with the construction of the proposed improvements is expected during construction. Given the limited nature of the improvements, no long-term air and noise quality impacts are anticipated. The request is the practicable alternative which best conforms to the purpose of this rule.

Given the limited nature of the proposed improvements, approval of this request would allow for a reasonable use of land which would not effect the shoreline views, the environment or ecology of the shoreline.

The proposed development is consistent with the County General Plan and Zoning Code. The proposed project conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map which designates the area as Resort. This Resort designation states "These areas include uses such as hotels, condominiums-hotels, (condominiums developed and/or operated as hotels), and supporting services." The Kona Regional Plan adopted as Resolution 84-1 by the Planning Commission in April 1984 recommends that the subject area be designated for Village Commercial (CV)/Residential Mixed Use. The property is currently zoned Resort-Hotel (V-.75).

Resort-Hotel (V-.75), allows for 750 square feet of land area for each rentable unit. The height limit for this area is forty-five (45) feet. The proposed uses are permitted within the Resort zone district.

The proposed development conforms to the following applicable goals, policies, standards and courses of action of the General Plan Land Use Element.

#### Land Use

- Maintain and, if feasible, improve the existing environmental quality of the island.
- Protect and conserve the natural resources of the County of Hawaii from undue exploitation, encroachment and damage.
- Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.
- Ensure that alterations to existing land forms and vegetation, expect crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

The proposed use conforms to the following goals and policies of the Economic and Commercial Elements:

#### Economic

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

#### Commercial

- Provide for commercial developments that maximize convenience to users.

- Commercial facilities shall be developed in areas adequately served by necessary services, such as water, utilities, sewers and transportation systems.
- Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.
- The development of commercial facilities should be designed to fit into the locale with minimal intrusion while providing the desired services. Appropriate infrastructure and design concerns shall be incorporated into the review of such developments.
- This development is consistent with the Economic and Commercial elements of the General Plan in that the proposed development will provide additional and expanded employment opportunities for the residents of the area. The employment opportunities from the proposed development as a result of this request will generate both short-term (construction) and long-term (operational) employment.
- This project will directly benefit the residents of this County as the real property tax base will substantially increase, will strengthen the existing visitor industry and provide residents with opportunities to improve their quality of life.
- The applicant has recognized the benefits of planning and designing a project in a manner that is sensitive to the natural features and unique historical heritage of the land. Based upon preliminary studies, the applicant believes that these objectives can be obtained in an economically viable manner.

#### Natural Resources and Shoreline

- Protect and conserve the natural resources of the County of Hawaii from undue exploitation, encroachment and damage.
- Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.
- Ensure that alterations to existing land forms and vegetation, except crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

Based on the above findings, it is determined that the proposed improvements are consistent with the Shoreline Setback Law pursuant to Chapter 205-31 and the criteria established in Rule No. 8 of the Planning Commission's Rules of Practice and Procedure, relating to Shoreline Setback Variance.

Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate to revoke this permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this permit.
3. Construction of the proposed restaurant expansion shall be completed within 5 years from the effective date of this permit. Prior to commencing construction of the proposed project, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved driveway access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule No. 17 (Landscaping Rule) associated with the proposed use.
4. All structural improvements within the flood zone must comply with Chapter 27 of the Hawaii County Code.
5. Any physical improvements below the base flood elevation will require a flood study and compliance with the National Flood Insurance Program Regulations meeting with the approval of the Department of Public Works.
6. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
7. Should any remains of historic sites, such as walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.



8. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed development.
9. 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.
10. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

### **Special Management Area (SMA) Use Permit**

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The applicant is proposing to expand the existing single story wooden restaurant structure to include second and third story levels. The existing structure was constructed in the late 1960's in a location that was then landward of the certified shoreline established at that time. The proposed expansion is to provide for additional

restaurant space as well as other commercial, retail and office uses. The total floor space for the restaurant is proposed for approximately 13,000 square feet. The existing ground floor level is approximately 4,100 square feet; the proposed second floor would be 5,970 square feet; and the third floor would be 2,830 square feet. According to the applicant, approximately 800 square feet of the existing restaurant lies makai of the certified shoreline, and approximately 500 square feet of the proposed floor space expansion would lie makai of the certified shoreline. It should be pointed out that the portion of the restaurant structure which lie makai of the certified shoreline is situated within the State Land Use Conservation District and is under the jurisdiction of the Board of Land and Natural Resources. Therefore, the applicant's request under consideration covers only that portion of the restaurant structure situated mauka of the certified shoreline, within the Shoreline Setback Area and the Special Management Area.

The applicant also proposes off-site improvements which include the southward extension of the Kailua Village shore-side promenade along the property frontage of the restaurant and connecting to sidewalks on the grounds of the Royal Kona Resort. The existing 25-stall parking area is located across of the restaurant property, between Kahakai Road and Alii Drive. The applicant proposes to expand the parking area to accommodate 50 vehicles with designated handicapped and loading stalls. Kahakai Road fronting the project site presently has a 14 to 16 feet pavement; however, it will be widened to a paved surface of 16 to 22 feet. Those proposed off-site improvements are situated outside of the Shoreline Setback area.

The 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 elimination of planning options. The project's objectives are as follows:

- increased opportunity for shoreline dining and entertainment;
- attractive commercial, office and retail space for local merchants;
- extension of Kailua Village seaside promenade through addition of a pedestrian walkway from the existing northern terminus of walkways at the Royal Kona Resort connecting to the existing shore-side promenade. This extension, approximately 340 feet, would improve pedestrian and vehicular safety along this section of Kahakai Road; and meet the Kailua Village Master Plan goal of a

continuous shore-side pedestrian walkway from the Royal Kona Resort to the Kailua Pier;

- continued access to Oneo Bay for shoreline activities.

The project site is located makai of Alii Drive and abuts the shoreline. There may be some visual impact from the project; however, the surrounding property will be left in its present state. The project site is completely developed with the existing restaurant and parking area. Current vegetation on the project site is dominated by non-native plants. There are no known rare or endangered plant life or animal species at the project site or in its immediate vicinity. The proposed development would not impact the immediate adjacent properties. Land uses adjacent to the subject properties consist of the Royal Kona Resort Hotel on lands zoned Resort (V-.75) and vacant lands zoned Multiple Family Residential (RM-1). In the immediate vicinity of the project site are various resort, multiple-family residential and commercial uses on lands zoned Resort (V-.75), Single Family Residential (RS-10), Village Commercial (CV-10) and RM-1. Several change of zone requests from RD-3.75 to CV-10 and RM-1 to CV-10 have been approved, to the east of the project site, along Lunapule Road.

The proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The FIRM maps indicate portions of the project site, specifically the restaurant property, are located within VE and AE flood zones by the Federal Flood Insurance Rate Map. Zone VE is defined as coastal flood area with high velocity wave action. Zone AE is defined as areas susceptible to 100-year flooding. The parking lot area is located within Zone X, area outside the 500-year flood plain. The Department of Public Works has recommended that a flood study be submitted for any civil improvements within the flood zone areas. Therefore, a condition of approval will be included to comply with this recommendation.

The Department of Health requires that if there is any type of process wastewater discharge from the project into State waters the applicant may be required to apply for an individual NPDES permit. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects on the coastal resources or environment.

The project site is fully developed with the existing restaurant structure and related uses and the parking lot area. The applicant's Final Environmental Assessment

did not locate any threatened or endangered species within the project site and found that there are no record of historic sites on any of the subject parcels. A condition of approval has been included that if archaeological sites are encountered during the proposed action, all work shall cease in the immediate area and the site is to be protected from further damage. The Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) office should be contacted immediately and allowed to conduct a field investigation to determine site significance. If the site is determined to be significant, the establishment of buffer zones, interim protection measures and remaining archaeological data recovery may need to be completed. This will satisfy the SMA objective to "Protect, preserve and where desirable restore significant historic and cultural resources."

An Assessment of the Intertidal Community Structure at Oneo Bay was prepared by Analytical Laboratories of Hawaii in August 1998. The project area has not been identified as essential habitat for endangered species and there are no anchialine ponds in the project area. The absence of plans to modify the shoreline or nearshore environment eliminates the risk of direct alteration of ecosystems. The study concluded that the proposed development will have no substantial adverse environmental or ecological effect as it will not introduce impediments to the environmental conditions necessary for supporting the biological community.

The study also indicated that impact to the marine communities would be during the construction phase of the proposed development. However, any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations.

The proposed development is not anticipated to have any substantial adverse environmental or ecological effects. The applicant's Final Environmental Assessment conducted for biological resources, historic and cultural resources, visual impacts, public access and recreation aspects, socio-economic impacts support this conclusion. The goals and objectives of the SMA with respect to coastal, recreational, scenic, historic and economic resources can be met with conditions of approval.

The proposed development is consistent with the County General Plan and Zoning Code. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Resort. This designation states "These areas include uses such as hotels, condominiums-hotels, (condominiums developed and/or operated as hotels), and supporting services." The Kona Regional Plan adopted as Resolution 84-1 by the Planning Commission in April 1984 recommends that the subject area be designated for Village Commercial (CV)/Residential Mixed Use. The property is currently zoned Resort-Hotel (V-.75).

Resort-Hotel (V-.75), allows for 750 square feet of land area for each rentable unit. The maximum height limit for this area is forty-five (45) feet. The proposed uses are permitted within the Resort zone district.

The proposed development conforms to the following applicable goals, policies, standards and courses of action of the General Plan Land Use Element.

#### Land Use

- Maintain and, if feasible, improve the existing environmental quality of the island.
- Protect and conserve the natural resources of the County of Hawaii from undue exploitation, encroachment and damage.
- Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.
- Ensure that alterations to existing land forms and vegetation, except crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

The proposed use conforms to the following goals and policies of the Economic and Commercial Elements:

#### Economic

- Provide residents with opportunities to improve their quality of life.
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

#### Commercial

- Provide for commercial developments that maximize convenience to users.
- Commercial facilities shall be developed in areas adequately served by necessary services, such as water, utilities, sewers and transportation systems.

- Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.
- The development of commercial facilities should be designed to fit into the locale with minimal intrusion while providing the desired services. Appropriate infrastructure and design concerns shall be incorporated into the review of such developments.

This development is consistent with the Economic and Commercial elements of the General Plan in that the proposed development will provide additional and expanded employment opportunities for the residents of the area. The employment opportunities from the proposed development as a result of this request will generate both short-term (construction) and long-term (operational) employment.

Based on the above findings, it is determined that the proposed development will not have any substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate to revoke this permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The required water commitment payment shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this permit.
3. Construction of the proposed restaurant expansion shall be completed within 5 years from the effective date of this permit. Prior to commencing construction of the proposed project, Final Plan Approval shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved driveway access, parking stalls and landscaping in compliance with the Zoning Code and Planning Department Rule No. 17 (Landscaping Rule) associated with the proposed use.

4. Kahakai Road shall be improved along the property's frontage with curb, gutter, and sidewalk construction and minimal pavement improvements meeting with the approval of the Department of Public Works.
5. All structural improvements within the flood zone must comply with Chapter 27 of the Hawaii County Code.
6. Any physical improvements below the base flood elevation will require a flood study and compliance with the National Flood Insurance Program Regulations meeting with the approval of the Department of Public Works.
7. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
8. Should any remains of historic sites, such as walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
9. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed development.
10. 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.
11. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
  - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

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- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

These approvals do not, however, sanction the specific plans submitted with the applications as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Eleanor Mirikitani of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Leonard S. Tanaka, Chairman  
Planning Commission

LoluKai01PC

cc: Mr. Eric Von Platen  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
West Hawaii Office  
Office of State Planning, CZM Program (w/Background)  
Department of Land and Natural Resources  
Kazu Hayashida, Director/DOT-Highways, Honolulu  
Mr. Norman Hayashi  
Mr. Jeffrey Darrow  
Mr. James R. Zimmerman  
Mr. and Mrs. Thomas Klemp  
Mr. and Mrs. Kenneth R. Williams  
R. J. Hansen  
Larry and Marilyn Saltzman  
Mr. John Swedberg  
Mr. Leonard L. Roman  
Ms. Cynthia Armsworth  
Ms. Sheila Spears