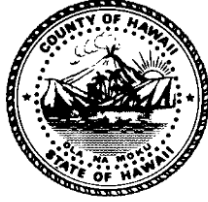


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County of Hawai'i

WINDWARD PLANNING COMMISSION

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

April 14, 2023

Sidney Fuke
Planning Consultant
P.O. Box 1345
Hilo, HI 96721
VIA EMAIL

Dear Mr. Fuke:

**SUBJECT: Special Permit Amendment (PL-SPP-2022-000031)
Special Permit No. 842 (Docket No. SPP-93-000003)
Applicant: Ke'Aloha Lani, LLC (formerly Hawai'i Brewery Development
Co, Inc.)
Request: Amendment to Condition 4 of Special Permit No. 842 for a 5-
Year Time Extension to Construct and Occupy on One Lot, and
a 10-Year Time Extension to Construct and Occupy the
Remaining Lots
Tax Map Key: (3) 1-6-141:024, 027, and 028, Puna, Hawai'i**

The Windward Planning Commission, at its duly held public hearing on April 6, 2023, voted to approve the above-referenced request to amend Condition 4 of Special Permit No. 842 for a 5-year time extension to construct and occupy on one lot and a 10-year time extension to construct and occupy the remaining lots. The project site is located on Shipman Road, east of Highway 11 (Volcano Highway), west of Railroad Avenue, and north of Highway 130 (Kea'au-Pāhoā Highway), Kea'au, Puna, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, successors, or assigns ("Applicant") shall be responsible for complying with all of the stated conditions of approval.
2. The Applicant shall indemnify and hold the County of Hawai'i and owners of Shipman Road (formerly Slaughterhouse Road) (TMK: 1-6-141: 022) harmless from

- and against any loss, liability, claim or demand for the property damage, personal injury and death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. Final Plan Approval of the brewery, distillery and soft drink bottling facility shall be secured from the Planning Department. Plans shall identify existing and proposed structures, paved (concrete or asphalt-concrete) driveway and parking areas associated with the proposed use. Appropriate landscaping shall be provided for the purpose of mitigating any noise and visual impacts which may be generated by the facility.
 4. Construction of the proposed brewery, distillery, or bottling facility and related improvements on one of the lots covered by TMK: 1-6-141: 024, 027, & 028 shall be completed, and a certificate of occupancy issued before October 18, 2028. Further construction on the remaining two lots shall be completed, and certificate of occupancy issued before October 18, 2033. Prior to establishing a use permitted under the existing FA-2a zoning, an amendment to delete the affected lot or portion thereof from the Special Permit shall be filed with the Planning Department. A recorded instrument informing all three lot owners of this conditional use requirement shall be filed with the Planning Department within 180 days of the effective date of this amendment.
 5. Access to the subject property shall meet with the approval of the Department of Public Works. The Applicant shall provide pavement improvements within the entire length of the roadway stub (Easement 409 & 412) in a manner meeting with the approval of the Department of Public Works, prior to the issuance of a certificate of occupancy for the proposed development.
 6. The Applicant shall provide maximum daily water usage calculations prepared by a professional engineer licensed in the State of Hawai'i and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" shall be submitted to the Department of Water Supply prior to issuance of certificate of occupancy for development on TMK: 1-6-141: 024 and prior the submittal of plans for Plan Approval review to the Planning Department on the remaining lots. Based upon the calculations, if required, the applicant shall install a larger or additional service lateral or meter, and remit the prevailing facilities charge to the Department of Water Supply. The applicant is responsible for maintaining valid water commitments to support the proposed development until such time that required water facilities charges are paid in full.

7. Should a larger water meter be required, a reduced pressure type backflow prevention assembly must be installed within five (5) feet of the meter on private property and must be inspected by the Department of Water Supply before water service can be activated.
8. Subject to other agencies' requirements to construct improvements within the road right-of-way fronting the property affected by the proposed development, the applicant shall be responsible for the relocation and adjustment of the Department of Water Supply's affected water system facilities, should they be necessary, which may include conveying the water system improvements and necessary easements to the Water Board.
9. Prior to receipt of a certificate of occupancy, the Applicant shall implement any improvements required by the Fire Department and/or Department of Water Supply to ensure that fire protection requirements can be met for the industrial use.
10. The visitor destination center operations shall be limited to hours from 7:00 a.m. to 6:30 p.m., daily.
11. The visitor destination center shall be limited to demonstrations of beer manufacturing, beer sampling and the retail sale of related memorabilia. Seating capacity of the center shall not exceed 250 people.
12. The Planning Department shall reassess the visitor destination center operations for continued conformance against the original intent and purpose for granting the Special permit three (3) years from the date of issuance of a certificate of occupancy for the visitor destination center. As may be requested by Planning Director, the applicant shall provide all available information necessary for the proper assessment of the visitor center operations, which shall include a detailed account of all complaints received by the Applicant and its disposition, visitor counts and other relevant information. Should the Director find the visitor destination center operation not within the original intent for granting the Special permit, the matter shall be brought before the Planning Commission for reconsideration.
13. The Applicant shall comply with applicable laws, rules and regulations of the affected agencies, including those of the Department of Health and the Department of Liquor Control.
14. Upon compliance with all conditions of approval, in conjunction with the application for a certificate of occupancy and prior to the opening of the brewery, the Applicant shall submit a final status report, in writing, to the Planning Department.

Sidney Fuke
Planning Consultant
April 14, 2023
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15. Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this Special Permit.

[Note: Ramseyer version available upon request.]

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

Approval of this request is based on the reasons given in the enclosed Findings Report.

Should you have any questions regarding the above, please contact Christian Kay of the Planning Department at (808) 961-8136 or by email at christian.kay@hawaiicounty.gov

Sincerely,



Dennis Lin, Chairman
Windward Planning Commission

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Enclosure: Planning Commission Findings Report

cc w/enclosure via email: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Land Use Commission
County Fire Department
State Department of Health
GIS Section

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

KE‘ALOHA LANI LLC (FORMERLY HAWAI‘I BREWERY DEVELOPMENT CO., INC.)
AMENDMENT TO SPECIAL PERMIT NO. 842 (PL-SPP-2022-000031)

Based on the following findings, the request to amend Condition No. 4 (complete construction) of Special Permit No. 842 is hereby **approved by the Planning Commission**. The subject properties are located on Shipman Road, east of Highway 11 (Volcano Highway), west of Railroad Avenue, and north of Highway 130 (Kea‘au-Pāhoa Highway), Kea‘au, Puna, Hawai‘i, TMKs: (3) 1-6-141:024, 027, & 028.

The applicant has submitted a request to amend Condition No. 4 (complete construction) of Special Permit No. 842, which allowed the development of a brewery, distillery and water and soft drink bottling facility on 14.587 acres of land (including the subject parcels which total 7.829 acres of land) situated within the State Land Use Agricultural District.

The applicant is requesting a 5-year time extension to construct and occupy on one of the three lots within the project area, and a 10-year time extension to construct and occupy the remaining two lots. The applicant requests that the condition be amended as follows (material to be deleted is bracketed/struck through, material to be added is underscored):

“Construction of the proposed brewery, distillery, or bottling facility and related improvements on one of the lots covered by TMK: 1-6-141: 24, 27, & 28 shall be completed, and a certificate of occupancy issued before October 18, [~~2023~~] 2028. Further construction on the remaining two lots shall be completed, and certificate of occupancy issued before October 18, [~~2028~~] 2033. Prior to establishing a use permitted under the existing FA-2a zoning, an amendment to delete the affected lot or portion thereof from the Special Permit shall be filed with the Planning Department. A recorded instrument informing all three lot owners of this conditional use requirement shall be filed with the Planning Department prior to the conveyance of any of those lots.”

On June 7, 1993, Special Permit No. 842 was approved by the Planning Commission to establish a brewery, water and soft drink bottling facility and related improvements. The Hawaiian Springs water bottling facility was subsequently built on 7+ acres of the original approximately 14.5-acre site that was subject to the Special Permit. The 14.587-acre parcel of land was subsequently subdivided in 2005 resulting in two, 7+acre parcels, which is identified as TMK 1-6-141:001.

On December 16, 2003, the Planning Commission granted the first 5-year extension of time to complete construction of the brewery and soft drink bottling component of the project.

On December 18, 2009, the Planning Commission granted a second amendment to complete construction, and the County Council approved a concurrent change of zone from A-5a to FA-2a for approximately 7.829 acres on March 18, 2010. On November 21, 2011, Final Subdivision Approval was secured for the subdivision of the approximately 7.82-acre property into the three subject parcels (TMK 1-6-141:024, 027, 028). The

reason for the subdivision was to increase the potential of attracting different operators for a brewery, soft drink, or a water bottle facility on the various lots.

On October 18, 2013, and February 16, 2018, the Planning Commission granted a third and fourth 5-year extension of time to complete construction. In addition, the 2013 amendment allowed the development of a distillery use on one or all of the subject parcels.

In April 2021, the applicant acquired parcels 24 and 27 and since then they have diligently worked securing the necessary permits to develop a water bottling facility on parcel 24 with the intent of moving its existing water bottling facility from Hilo closer to the source of the water proximate to the project site.

The applicant has secured Final Plan Approval for the new proposed water bottling facility on parcel 24, a grading permit, and a well permit from the State on parcel 27, which will provide water for the water bottling facility in the near term. Additionally, the applicant is in the process of finalizing drafts of civil, electrical, and building plans for submittal in the first quarter of 2023 and completion of construction within 18-months thereafter. Given this timeline, the applicant will not be able to meet the October 2023 deadline and thus requires the time extension for constructing and occupying on parcel 24.

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.

The applicant acquired the property less than two years ago and has since been diligent in acquiring required land use, land clearing and other permits necessary to move their existing water bottling facility in Hilo to the permit area. In addition, they have developed a deepwater, potable water well on parcel 27 (which has a capacity of 250 gallons per minute or 360,000 gallons per day) to supply potable water for the bottling facility in the near term and eventually plan to develop a second well on parcel 24 to be used in conjunction with the existing well to support the existing and planned activities on both parcels.

Despite the preceding, the applicant will not be able to complete construction and secure occupancy of the proposed project by the October 18, 2023 deadline. The applicant estimates that the project will be complete within 18 months and is thus requesting the 5-year time extension to complete the project on parcel 24.

Additionally, while the applicant and Bender Consulting, LTD (owner of parcel 28) are considering options to construct beverage related facilities (e.g., a brewery/ distillery or soft drink bottling facility) as permitted by the subject Special Permit, neither has any firm plans or specific development timetable to complete the project, thus they are requesting the flexibility of a 10-year time extension to develop and occupy on the remaining two lots.

Granting of the time extension would not be contrary to the General Plan, Community Development Plan or Zoning Code. Since the Special Permit was approved in 1993, there has been one change to the General Plan LUPAG Map designation for the permit area. In 2015 the County Council changed the designation from Low Density Urban to Medium Density Urban for the subject permit area. This change was made to encourage more commercial and higher density residential

development in and near Kea‘au Town. The permit area is also adjacent to and a northerly extension of an area along Railroad Avenue which is designated Industrial on the LUPAG Map.

The Puna Community Development Plan (CDP) was adopted in 2008 and the permit is situated just outside the boundaries of the Kea‘au Regional Town Center as designated by the CDP, which is located just to the south and west of the subject properties. Despite the preceding, the subject Special Permit was granted in 1993 and has been amended for additional time four times (in 2003, 2009, 2013, and 2018) since the CDP was adopted. Thus, this time extension request continues to be consistent with the Puna CDP.

Finally, conditions of approval would require the applicant construct all improvements consistent with the prevailing Zoning Code standards such as setback, height, parking, and landscaping.

Granting of the time extension would not be contrary to the original reasons for the granting of the permit. The land on which the proposed use is located is unsuited for agricultural uses. Soils within the property are classified as “Other Important Agricultural Land” according to the ALISH map and “D” or “Poor” by the Land Study Bureau for agricultural productivity. While soils within the project site are fairly suitable for agricultural uses, the property is not currently being utilized for intensive agricultural purposes. A water bottling facility has been established on approximately seven acres of the original 14.5-acre site with the balance subdivided into three 2-acre lots. Therefore, it is anticipated that the granting of additional time to establish the permitted uses on the remainder of the original 14.5-acre project site will not adversely impact the agricultural land inventory within the County of Hawai‘i and the request is not contrary to the intent and purpose of the State Land Use Law.

The proposed use will not have any significant adverse effects on surrounding properties. Other existing industrial uses are located in the immediate vicinity of the project site, including processing facilities for papaya, pickled vegetables, fruit and macadamia nut as well as a HELCO substation. Given the use of similar industrial-type uses within the area, it is not anticipated that the proposed use will generate any adverse impacts to surrounding properties.

The proposed use will not substantially alter or change the essential character of the land and the present use or unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. As stated above, the proposed use is consistent with the industrial type uses found in the immediate vicinity, thus the time extension to allow the completion of uses permitted by the subject Special Permit will not substantially alter or change the essential character of the land and present use.

Conditions of approval require the applicant to develop the proposed and any additional uses consistent with existing State and County requirements, including access improvements meeting with the approval of DPW and compliance with State Department of Health requirements (including wastewater improvements and water well development). Additionally, the Director recommends adding two new conditions charging the applicant to comply with DWS and Fire Department requirements outlined in their comment letters prior to receipt of Certificate of Occupancy.

The request is no contrary to Chapter 205A, Hawai'i Revised Statutes relating to Coastal Zone Management. The project site is not proximate to the shoreline and is situated outside of the SMA. Thus, the property will not be affected coastal hazards and beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic or open space preserves, coastal ecosystems, or marine resources on the subject property.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kama'aina accounts of the area, historical survey of documentary records, or botanical study was included in the application. When the property was originally rezoned in 2003, the Department of Land and Natural Resources-Historic Preservation Division stated that no historic properties will be affected by the project.

The valuable cultural, historical, and natural resources found in the rezoning area: The Department is not aware of any cultural or historic resources on the property. According to applicant, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the property.

Possible adverse effect or impairment of valued resources: Some native plants may be destroyed by construction or ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices.

Feasible actions to protect native Hawaiian rights: According to the applicant, no gathering is taking place on the site. Thus, to the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawai'i rights; therefore, no action is necessary to protect these rights.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.