

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

## DIRECTOR'S REPORT

### I. SUMMARY

**Action Required by Planning Commission:** Consideration of Revocation Petition involving the permits issued to Coco Palms Hui, LLC.

**Permit Application Nos.** Class IV Zoning Permit Z-IV-2015-8  
Project Development Use Permit PDU-2015-7  
Variance Permit V-2015-1  
Special Management Area Use Permit SMA(U)-2015-6

**Name of Applicant(s)** COCO PALMS HUI, LLC.

### II. PROJECT DATA

PROJECT INFORMATION			
<b>Parcel Location:</b>	Wailua, Kaua'i. Located mauka of Kūhiō Highway immediately northeast of its intersection with Kuamoo Road.		
<b>Tax Map Key(s):</b>	4-1-003:004, 005, 007, 011 & 017 4-10005:014 & 017	<b>Area:</b>	Approx. 32.33 acres
ZONING & DEVELOPMENT STANDARDS			
<b>Zoning:</b>	Residential (R-10), Resort (RR-20) & Open (O) Districts		
<b>State Land Use District:</b>	Urban		
<b>General Plan Designation:</b>	Resort		
<b>Height Limit:</b>	55 feet max		
<b>Max. Land Coverage:</b>	50% of lot area		
<b>Parking Requirement:</b>	(Refer to Commission Approval)		
<b>Front Setback:</b>	10 feet min.		
<b>Rear Setback:</b>	10 feet min,		
<b>Side Setback:</b>	5 feet min.		
<b>Community Plan Area:</b>	Kapa'a-Wailua Development Plan		
<b>Community Plan Land Use Designation:</b>	N/A		
<b>Deviations or Variances Requested:</b>	N/A		

### III. PROJECT DESCRIPTION AND PERMIT BACKGROUND

On March 15, 2015, the Planning Commission approved the subject permits involving the renovation and redevelopment of the Coco Palms Resort in Wailua that consisted of 350 hotel units. The proposed development also includes support facilities, retail shops, restaurants, an office space and hotel lobby area, a museum, meeting rooms, maintenance buildings, a spa and gym building, and off-street parking. The permits were approved with a total of twenty-nine (29) conditions of approval.

In 2016, the Planning Department initiated permit revocation proceedings based on the Applicant's inability to meet timelines established under Condition 17 of the 2015 Conditions of Approval.

Subsequently, on August 11, 2015, the Planning Commission approved the Applicant's extension request relating to Conditions 16 and 17 of the subject permits relating to the provision for screening along Kūhiō Highway & Kuamoo Road, as well as the demolition of existing structures.

In 2018, the Planning Department initiated permit revocation proceedings again, this time based on the applicant's inability to meet building permit submittal conditions under Condition 15 of the 2016 Conditions of Approval.

Subsequently, at the November 13, 2018, the Planning Commission determined to accept a stipulation between the Applicant and the Department that dismissed the enforcement-related order to show cause. The updated 29 conditions of approval reflect the stipulations between the respective parties made at that time.

The project involves multiple parcels, and their respective land use designations are noted:

LAND INFORMATION					
Tax Map Key	Land Area (Acres)	State Land Use Designation	General Plan	County Zoning	
4-1-003:007	12.63	Urban	Resort	Resort (RR-20)	
4-1-003:004	3.69			Open (O)	
4-1-003:005	14.83			Open (O)	
4-1-003:011	0.496			Resort (RR-20)	
4-1-003:017	0.855			Open (O)	
4-1-005:014	0.204			Residential (R-10)	
4-1-005:017	0.122			Residential (R-10)	
<b>TOTAL AREA</b> (excludes ditch)	32.33 ac.				

#### IV. INTERVENOR'S PETITION REASONS/JUSTIFICATION

As noted, the Petitioner's reason for intervention is based on their assessment of the Applicant's failure to comply with several conditions of the foregoing permits. The petition specifically identifies Conditions 3, 5, 14, 15, 18, 19, 20 and 20.b. For reference, the conditions are noted below and read:

- "3. Prior to building permit approval, the applicant shall meet the requirements and standards of the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD). The applicant is further advised that should any archaeological or historical resource be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures. The Planning Department has reviewed comments of the State Historic Preservation Division, and under its independent Chapter 6E and related Hawaii Constitutional obligations and duties, requires the following historic preservation measure be fulfilled by the applicant.*
- a. A revised SOW for the project, including any proposed work with potential to affect the historic lagoon, including staging areas, construction of new bridges, dredging, or filling in of areas near the lagoon;*
  - b. Information regarding any potential federal funding or federal permits that may be required, especially relative to the historic lagoons;*
  - c. An Intensive-Level Survey (ILS) that identifies and assesses all remaining architectural historic properties and their potential eligibility for the Hawaii and National Registers;*
  - d. A Burial Treatment Plan (BTP) that meets HAR §13-300-34(b), and following a determination by the KIBC regarding burial treatment, a Burial Site Component of a Data Recovery Plan (BSCDRP) that meets HAR §13-300-34(b)(3)(B); and*
  - e. A Revised Archaeological Monitoring Plan (AMP) that includes provisions for addressing architectural monitoring concerns and meets HAR §13-279-4, including ongoing monitoring during construction and 90 days after completion of construction.*

*As of June 2016, the Applicant has received approval from SHPD with respect to their HRS 6E-42 review and required mitigation actions. However, Applicant is also advised that should any human remains be discovered as a consequence of digging activities, WORK MUST IMMEDIATELY STOP IN THE VICINITY OF THE FIND AND SHPD AND THE PLANNING DEPARTMENT MUST BE NOTIFIED.*

- 5. Applicant is aware that any final construction plans involving the former Seashell Restaurant site that deviates substantially from the conceptual plans presented to the State Department of Land and Natural Resources may trigger compliance with the statutes and regulations under the jurisdiction of the Office of Coastal and Conservation Lands, Hawaii State Department of Land and Natural Resources if final*

*development is proposed within the shoreline area. Applicant is on notice that, if any such final plans proposed development within the shoreline area, this permit action may be deemed invalid and require modification and re-approval only after compliance with Chapter 343, Hawaii Revised Statutes, is attained.*

- 14. Applicant acknowledges affordable housing requirements apply to this proposal, and in compliance with Chapter 7A, Kauai County Code (1987), Applicant has entered into, and will perform its obligations under, that certain Housing Agreement (for Coco Palms) dated December 4, 2015, directly with the Kauai County Housing Agency, which has been fully executed and recorded on February 9, 2016.*
- 15. Applicant shall submit by August 31, 2019 plans to for all remaining building permits for the construction of vertical improvements on the project site, and will thereafter diligently work in good faith with the Kauai Division of Buildings ("Building Division") to obtain final building permit approval for all remaining permits. Construction shall commence within one year after the date of final approval of the referenced building permits. Further, pursuant to PDU requirements in the CZO, construction shall commence within one year after the date of full approval of such building permits. Also, Applicant shall pull all such building permits within dix months after the approval of the final building permit.*
- 18. Applicant shall provide 20 public parking spaces at the North end of the project site with signage identifying their use by beachgoers and those using public transit with the operator opens to the public the building of the project that is closest to the parking lot contain such public parking spaces. Further, the applicant shall provide 20 stalls for parking with signage identifying their use by public beachgoers along the south end of the project. These stalls shall be clearly marked for public beachgoers use only. Also, the applicant at its own expense shall work with the county to site, design, construction, and maintain in perpetuity, a comfort station consisting of restrooms and showers for beachgoers. This comfort station shall be located adjacent or approximate to this public beachgoers parking area.*
- 19. All parking for guest, customers, and employees shall be accommodated on site. No parking on Kuamoo, Haleilio or Apana Roads shall be allowed. No use of parking lots on adjacent property shall be allowed as well.*
- 20. Given outstanding evaluation of the Traffic Impact Analysis Report (TIAR) by both the Department of Public Works and State Department of Transportation, in the interim, the Applicant shall provide the following to mitigate traffic impacts created by the development:*
  - a. Provide, at the Applicant's expense, a shuttle for eighteen (18) months beginning when the hotel operator open the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public as a pilot program to facilitate transit to and from the Lihue Airport and the development;*

- b. *Provide, at the applicant's expense, a circulator shuttle for eighteen (18) months beginning when the hotel operator opens the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public to move patrons from the hotel to Lydgate and Wailua Beach Park, the Seashell Restaurant site, the Coconut Marketplace and other destinations within the main Kapaa transit corridor that shall be determined by the County of Kauai Executive on Transportation at least 90 days before such shuttle service is scheduled to begin.*
- c. *Provide, at the Applicant's expense, a bike share program operated by Applicant or a render selected by Applicant for patrons of the resort to allow guests to ride bikes into Kapaa Town and other destinations without driving;*
- d. *The applicant shall work with the State Department of Transportation and Department of Public Works to resolve pedestrian crossing, sidewalks and vehicular traffic demands created by the development, and bear implementation costs proportional to the impact that arises, including the installation of a continuous public sidewalk on the Kuhio Highway frontage between Kuamoo and Haleilio; and*
- e. *Provide the Planning Department, Department of Public Works, and State Department of Transportation an update to the TIAR one (1) year after receiving the last certificate of occupancy for the project evaluating traffic impacts created by the resort and analyze the need for additional bus stops.*
- f. *Provide the Planning Department with a report on the Applicant's efforts to work with the Department of Land and Natural Resources to obtain permission to use the lands held by lease for a mauka access, either vehicular, or bike/pedestrian, to allow movement of residents between Kuamoo Road and Haleilio Road.*

*Should the updated TIAR, as accepted by the three agencies, determine a significant adverse change in the traffic condition resulting solely from the project beyond the traffic conditions anticipated in the original TIAR, Applicant is aware that this permit is subject to reasonable modification by the Planning Commission that Applicant may be responsible for the proportionate costs for any impacts of such significant adverse change for which a nexus to the additional anticipated traffic conditions may be identified."*

The basis for revocation of the permits is detailed in Pages 9-17 of the Petition.

## **V. BACKGROUND**

As required by Condition 29 of the permits, the Applicant is required to submit an annual report to the Planning Commission of the status and progress of the report. Condition No. 29 reads:

*"29. On or before June 30<sup>th</sup> of each year until all conditions have been satisfied, the Applicant shall submit an annual report to the Planning Commission of the status of and progress on, each unsatisfied condition, particularly conditions with workforce*

*housing requirements and transportation requirements. These conditions shall be modified by the Planning Commission to reflect the satisfaction of any condition."*

Since 2019, the Applicant has submitted annual reports to the Planning Commission identifying the progress of the project. Dating back, the Applicant's response to the conditions noted above have been either "completed" where the Applicant satisfied the requirement, "ongoing" meaning they are making efforts to comply with those specific requirements, or "forthcoming" meaning that they intend to address that requirement through the building permit process or at the time of resort operation.

## **VI. RULES OF PRACTICE AND PROCEDURE OF THE KAUAI COUNTY PLANNING COMMISSION**

Chapter 12, entitled "Revocation and Modification of Permits"

### Section 1-12-5 of the Planning Commission Rules

The Director shall review and investigate the basis for any petition for revocation of a permit which the commission has final authority to grant or which the commission makes a recommendation and report to the Kauai County Council, State Land Use Commission or other agency which has the final authority to grant. The Director shall file his report with the Commission within sixty (60) days from the date of the acceptance of the petition, unless the commission allows the Director more time to investigate the contents of the petition. The Commission shall review the Director's report and if the Commission finds that there is reasonable cause to believe that there currently is a failure to perform according to the conditions imposed, the Commission shall issue and serve upon the party bound by the condition an Order to Show Cause why the permit should not be revoked or modified.

## **VII. DEPARTMENT'S ANALYSIS PERTAINING TO SPECIFIC CONDITIONS OF THE PERMITS LISTED BY THE PETITIONER**

In considering the petition, the following analysis pertains to the specific permit conditions as referenced by the Petitioner.

- A. Condition No. 3 – Requirements relating to the protection of archaeological and historic resources.
  - 1. A Preservation Plan dated December 2013 was prepared for the lagoon comprising of components of the fishponds.
  - 2. The plan identified measures for preservation and one of the recommendations is to establish buffer zones from historical features such as the lagoon and fishpond components.
  - 3. Section 5.1 of the Preservation Plan mentions: "The original fishponds are not being preserved, what is being preserved is a former, modern hotel lagoon amenity at the location of the earlier fishponds. What is exposed is lagoon walls of

basalt boulder set in mortar, dilapidated concrete hotel appurtenances (paths, bridges) and former hotel landscaping.

4. One of the interim measures identified in the plan is to maintain a 20 foot distance from the lagoon. A long-term preservation provision is to establish a “buffer zone” for the lagoon and fishpond components that extends from the outer edge of the lagoon’s stone walls, and the buffer zone will typically be 20 feet wide.
5. Work or any development within the buffer zone requires the State Historic Preservation Division’s (SHPD) review and/or approval.
6. The 2023 Annual Report notes that compliance with this requirement is “complete.”

B. Condition No. 5 – Requirement relating to the restoration and redevelopment of the Seashell Restaurant site.

1. The repair/restoration of the Seashell Restaurant structure was previously proposed through Building Permit #17-1916.
2. This Building Permit never received final approval, and it has lapsed and is no longer in effect.

C. Condition No. 14 – Requirement relating to affordable housing.

1. The Applicant entered into a housing agreement with the County of Kauai in 2016 that would provide thirty (30) workforce housing units and it would remain affordable for at least forty (40) years.
2. The agreement stipulates that the construction of these units would occur off-site on parcels identified as TMK: (4) 4-1-006:026 & 053.
3. The 2023 Annual Report notes that compliance with this requirement is “ongoing.”

D. Condition No. 15 – Requirement relating to building permits for vertical improvements.

1. The final building permit was issued on February 28, 2023, and therefore construction must commence no later than February 27, 2024.
2. The 2023 Annual Report notes that compliance with this requirement is “ongoing.”

E. Condition No. 18 – Requirement relating to provision of public parking spaces.

1. The Applicant’s 2023 Site Plan identifies 20 public parking stalls on parcel identified as TMK: (4) 4-1-005:017, which is located on the southern portion of the project site.
2. Parcel 17 is owned by the State of Hawaii, and it has been issued a Revocable Permit (RP S-7444) to the Coco Palms Ventures, LLC.

F. Condition No. 19 - Requirement relating to parking restrictions along Kuamoo, Haleilio, and Apana Roads.

1. The 2023 Annual Report states that parking spaces shown on the site plans shall be for all guests, customers, and employees. No parking on public roads will be allowed.

G. Condition No. 20 - Requirement relating to traffic impact mitigation measures.

1. Condition 20.b. specifically relates to the provision for a circulator shuttle service that would move the resort patrons from the hotel to Lydgate and Wailua Beach Park, the Seashell Restaurant site, the Coconut Marketplace, and other destinations within the main Kapa'a transit corridor.
2. This service would be in place for eighteen (18) months beginning when the resort opens the main lobby.
3. The 2023 Annual Report notes that compliance with this requirement is "forthcoming."

## VIII. DEPARTMENT'S ANALYSIS PERTAINING TO ADDITIONAL CONDITIONS OF THE PERMITS

In considering the petition, the following analysis pertains to additional conditions of the permit:

- A. Condition No. 1 - *The applicant shall contribute \$50,000.00 to the County of Kauai to assist the Planning Department's historic preservation mission via its efforts to perpetuate the cultural and historic significance of the Wailua/Waipouli region consistent with the Department's historic preservation program, including the creation of educational programs and signage.*

This contribution was paid to, and received by, the County of Kauai on October 17, 2015.

- B. Condition No. 2 - *The applicant shall contribute \$50,000.00 to the County of Kauai to assist the County with its current placemaking efforts, including moku and ahupuaa signage of the Wailua area.*

This contribution was paid to, and received by, the County of Kauai on October 17, 2015.

- C. Condition No. 10 - *The Applicant shall contribute \$10,000.00 to the County of Kauai Transportation Agency to assist with the construction of a new bus stop along Kuhio Highway in the Wailua area.*

This contribution was paid to, and received by, the County of Kauai on October 17, 2015.

- D. Condition No. 17 - *Applicant shall substantially complete the demolition of work described in the existing demolition permits issued for the property by March 31, 2017 subject to extension caused by the occurrence of force majeure events.*

The demolition described in these referenced demolition permits was complete prior to March 31, 2017.



E. Condition No. 21 - Applicant shall work with the County and bear the costs of the following improvements:

*Provide an in lieu payment of the \$93,750 to the County of Kauai by June 30, 2017 for the cost of a dedicated right turn lane on Haleilio Road, from Apana Road to Kuhio Highway in addition to an existing through lane.....By January 31, 2019, the applicant shall submit plans for the subdivision of the portions of its land to be dedicated to the Kauai Planning Department and shall thereafter diligently work in good faith with the Planning Department to obtain final subdivision approval of such plans, and to dedicate such subdivided portions to the County.*

This payment received by the County on June 30, 2017.

The subdivision application was submitted on January 18, 2019. Final subdivision approved January 28 2020.

F. **EVALUATION**

In considering the petition for revocation and reviewing the noted conditions above, the department does not dispute that some of the requirements remain unmet. It is evident that there are obligations that the Applicant needs to fulfill prior to occupancy or when the resort is in operation.

With respect to the provisions for off-street parking, the Applicant must satisfy the requirement and must adhere to the preservation plan measures. Similarly, the Applicant must comply with the affordable housing requirement as well as mitigating traffic impacts relating to the operation of the resort facility.

In considering the grounds for revocation of the subject permits, the department finds that making that determination is still premature for the following reasons:

- A. While the building permits have been approved, there is still time within the zoning permits conditions of approval to commence construction.
- B. The Applicant still can resolve the affordable housing requirement with the County Housing Agency, and they remain in discussion to address alternatives.
- C. In order to comply with Condition Nos. 20.a., 20.b., and 20.c., it will be necessary during the operation of the resort facility. As affirmed in the conditions of approval, plans to satisfy this requirement can still be accomplished leading up to the resort's opening and after its initial operation.
- A. As of the writing of this Report, there is no reasonable cause demonstrating a failure to perform according to the conditions imposed currently exists because all of the conditions have either been performed or are in the process of being fulfilled. Action to revoke the subject permits today, given the current status of the respective permits' conditions of

approval, could present considerable legal and fiduciary concerns that the Commission should consult further with the County Attorney's Office

**G. PRELIMINARY RECOMMENDATION**

For the foregoing reasons, it is recommended that the Commission **DENY** the petition for revocation of the Applicant's permits.

Approved & Recommended to Commission:

By   
KA'AINA S. HULL  
Director of Planning

Date: 1/19/2024

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

## SUPPLEMENT #1 TO DIRECTOR'S REPORT

**RE:** Class IV Zoning Permit Z-IV-2015-8  
Project Development Use Permit PDU-2015-7  
Variance Permit V-2015-1  
Special Management Area Use Permit SMA(U)-2015-6

**APPLICANT:** 2015 Applicant: Coco Palms Hui, LLC Owner: RP21 Coco Palms, LLC.

**SUBJECT:** Friends of Maha'ulepu Petition for Revocation of Permits Issued to Coco Palms Hui, LCC"

### REVISION TO DIRECTOR'S REPORT

For clarification, the petition involves revocation of the permits related to the project and it does not involve intervention on the project. As such, the department feels it is necessary to make the following corrections to the Director's Report dated January 19, 2024:

#### A. Page 3

#### IV. ~~[INTERVENOR'S]~~ PETITION REASONS/JUSTIFICATION

As noted, the Petitioner's alleged grounds for revocation [~~for intervention~~] is based on the Applicant's failure to comply with several conditions of the foregoing permits. The petition specifically identifies Condition Nos. 3, 5, 14, 15, 17, 18, 19, 20 and 20.b. For reference, the conditions are noted below and read:

Regarding the sequence of events relating to the permits, the order shown on Page 2, Item III., more specifically, paragraphs 2 & 3 should be reversed to read:

#### B. Page 2

#### III. PROJECT DESCRIPTION AND PERMIT BACKGROUND

On March 15, 2015, the Planning Commission approved the subject permits...

Subsequently, on August 11, 2015, the Planning Commission approved the Applicant's extension request relating to Condition Nos. 16 & 17 of the subject permits relating to

the provision for screening along Kūhiō Highway & Kuamoo Road, as well as the demolition of existing structures.

In 2016, the Planning Department initiated permit revocation proceedings based on the Applicant's inability to meet timelines established under Condition 17 of the 2015 Conditions of Approval.

In 2018, the Planning Department initiated permit revocation proceedings again, this time based on...

#### SUPPLEMENTAL ANALYSIS

The following supplements the department's analysis in Section VII. Of the Director's Report dated January 29, 2024:

- A. Condition No. 3 – Requirement relating to the protection of archaeological and historic resources.

On Page 11 of the Petitioner's Application, it highlighted parking areas that would be encroaching into the 20 feet "buffer zone" as specified in the Preservation Plan. It should be noted that the buffer zone is a requirement of the DLNR State Historic Preservation Division (SHPD), and any work/proposal within the buffer zone would be subject to review and approval or denial by the SHPD.

If SHPD denies this proposal, these parking spaces could be removed, and it would not jeopardize the off-street parking requirement for the resort project (399 stalls). The parking plan exceeds the number of required parking stalls for the project.

- B. Condition No. 5 – Requirement relating to the restoration and redevelopment of the Seashell Restaurant site.

The department is re-emphasizing that Building Permit #17-1916 is no longer valid. Any proposed improvements to this facility would require a shoreline survey to determine if the proposed renovations would occur in what could now be State lands, and if so, additional review by DLNR OCCL would be necessary.

- C. Condition No. 20 – Requirement relating to traffic impact mitigation measures.

As previously noted in the Director's Report, Condition 20.b. specifically relates to the provision for a circulator shuttle service that would move the resort patrons from the hotel to various locations in Wailua/Kapa'a. There is public concern regarding the County park in the area immediately adjacent to the Seashell Restaurant site, to allegedly be used as a "turnaround" as noted on Page 12 of RP21 Opposition.

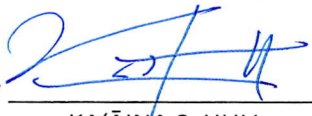
Condition 20.b. requires shuttling of patrons from the resort to various locations, and it does identify areas of possible passenger drop off but not the exaction location. A viable solution for traffic flow would be to have the shuttle service pull off onto Papaloa Road where there is enough room to pull onto the curbside for passengers pick up and drop off (situated across from the existing Shell gas station). The shuttle service can then continue and turn onto Lanikai Street in order to return to the main highway since there are dedicated lanes to facilitate this service.

D. Condition No. 11 – Requirements related to wastewater requirements for the project.

The Applicant's 2023 Annual Report notes that the condition has been fulfilled through the building permit. The extent of the improvements has been coordinated between the Applicant and the COK Department of Public Works.

RECOMMENDATION

Based on the foregoing, the department stands with its initial recommendation contained in the Director's Report dated 1/19/2024.

By   
KA'ĀINA S. HULL  
Director of Planning  
Date: 3/5/2024