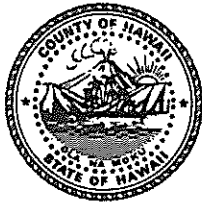


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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JUL 24 1997

Lisa Woods Munger, Esq.
Douglas A. Codiga, Esq.
Goodsill Anderson Quinn & Stifel
1099 Alakea Street, Suite 1800
Honolulu, HI 96813

Dear Ms. Munger and Mr. Codiga:

Special Management Area Use Permit Application (SMA 97-3)
Applicant: Hawaii Electric Light Company, Inc.
Request: Allow Installation and Energizing of a SSPP Unit-71 12.47/7.2 KV
Overhead Distribution System and Related Improvements
TMK: 1-2-30 to 41 (Portions)

The Planning Commission at its duly held public hearing on July 10, 1997, voted to approve the above-referenced application and adopt the report of the Hearing Officers; Findings of Fact and Conclusions of Law; Decision and Order with amendments as proposed by the Planning Director. Special Management Area Use (SMA) Permit No. 378 is hereby issued to allow the installation and energizing of a SSPP Unit-71 12.47/7.2 KV Overhead Distribution System of poles and lines and related improvements. The project site is located along Highway 137 (Kalapana-Kapoho Road) and within portions of the Kalapana Sea View Estates, Puna Beach Palisades and Kehena Beach Estates, Puna, Hawaii.

Approval of this request is based upon the following:

REPORT OF CONTESTED CASE HEARING OFFICERS

The Application of HAWAII ELECTRIC LIGHT COMPANY, INC., for a Special Management Area (SMA) Use Permit to allow installation and energizing of a SSPP Unit-71

7411
JUL 24 1997

12.47/7.2 KV overhead distribution system of poles and lines and related improvements came on for a contested case hearing on April 10, 1997 and on June 5 and 6, 1997 before Leonard Tanaka, Presiding Officer, and Kevin Balog and Eddie Alonzo, Hearing Officers (collectively referred to herein as "Hearing Officers"). Frederick Giannini appeared as legal counsel to the Hearing Officers.

Lisa Woods Munger and Douglas A. Codiga appeared on behalf of the Applicant the Hawaii Electric Light Company, Inc. ("HELCO"); Ronald Overmann appeared on behalf of Petitioner Homeowners Preferring Electricity ("HOPE"); Roger Christie appeared for a portion of the proceedings on behalf of Petitioner Michael Marlin;¹ Nahekeaopono Ka'iuwailani appeared on behalf of Petitioner Friends of the Red Road ("FORR"); and Patricia O'Toole appeared on behalf of the Planning Director of the County of Hawaii.

The Hearing Officers, having reviewed the submissions of the parties and having heard all of the evidence presented in this contested case, hereby submit this Report, Findings of Fact and Conclusions of Law, and Decision and Order pursuant to Rule 4-29(a) of the Rules of the County of Hawaii Planning Commission. Based on the attached Findings of Fact and Conclusions of Law, and Decision and Order, the Hearing Officers recommend the Planning Commission approve HELCO's Application for a Special Management Area (SMA) Use Permit regarding installation and energizing of a SSPP Unit-71 12.47/7.2 KV overhead distribution system of poles and lines and related improvements.

FINDINGS OF FACT

1. On February 28, 1997, the Hawaii Electric Light Company, Inc. ("HELCO") submitted a Special Management Area Use Permit Application ("Application") to the County of Hawaii Planning Department to allow the installation and energizing of a SSPP Unit-71 12.47/7.2 KV Overhead Distribution System and related improvements ("project").

2. The Application pertains to a portion of the project of approximately 9100 linear feet that lies within the Special Management Area ("SMA") and is located along Highway 137 (Kalapana-Kapoho Road), and within portions of three subdivisions: Kalapana Sea View

¹ On June 5, 1997 Mr. Christie appeared before the Hearing Officers. The Hearing Officers agreed to permit Mr. Christie to cross examine witnesses on behalf of Mr. Marlin. Mr. Christie subsequently waived cross examination privileges, read portions of Mr. Marlin's written testimony, and submitted additional exhibits as public testimony preceding the contested case proceedings.

Estates, Puna Beach Palisades and Kehena Beach Estates, in Puna, Hawaii (TMK: 1-2-30 through 41 (Portions)). This portion of the project and/or this area are referred to herein as the "SMA portion of the project" or the "SMA project area."

3. The SMA portion of the project is located in County of Hawaii right-of-ways.
4. The SMA portion of the project does not entail development in the Shoreline Setback Area.
5. A total of 113 lots are located within the SMA project area, including 21 lots in Kalapana Sea View Estates, 86 lots in Kehena Beach Estates, 3 lots in Puna Beach Palisades, and 3 parcels abutting Highway 137 situated between two of the subdivisions.
6. A total of 41 poles are located within the SMA project area, including 18 poles in Kehena Beach Estates, 5 poles in Kalapana Sea View Estates, and 18 poles along Highway 137.
7. The distribution line consists of wood poles with aluminum conductors mounted on horizontal crossarms. The poles are generally Class 3 poles measuring approximately 11.4" at the base and 7.5" at the top. The installed poles measure 39' above ground and 6' below ground. The poles are spaced approximately 250 feet apart.
8. At a minimum, the SMA project area poles are designed to withstand wind speeds of 56 miles per hour. The poles may withstand wind speeds of up to 70 miles per hour.
9. Upon completion, the entire project will be capable of providing electrical service to approximately 1200 lots in the three subdivisions. Residences have been constructed on approximately 158 lots within the entire project area, as of October 1, 1996.
10. The project, including the SMA portion of the project, follows an existing GTE Hawaiian Tel ("GTE") utility line and easement. In 1986, GTE installed telephone poles and lines in the SMA along the same route HELCO will use for the SMA portion of the project.
11. Upon obtaining the SMA permit, HELCO intends to perform additional work in the SMA project area, including installation of conductors and service drops, tree trimming, transfer of GTE lines to joint poles and GTE pole removal, and energizing the system.
12. Kehena Beach Estates is zoned Agricultural-1 acre (A-1a) with the exception of TMK 1-2-30:1, which is zoned Open. Areas makai of Highway 137 fronting Puna Beach

Palisades and Kalapana Sea View Estates are zoned Open. Utility lines are a permitted use in Open-zoned districts. Surrounding parcels are zoned Agricultural-3 acres (A-3a) and used mainly for dwelling purposes.

13. The State Land Use designation of the SMA area is "agricultural." Installation of public utilities is a permitted use under this designation.

14. General Plan LUPAG Map designates the SMA portion of the project as "Orchards." Areas along the coastline are designated "Open."

15. A Final Environmental Impact Statement ("EIS") was completed and officially accepted by the County of Hawaii Planning Department on February 24, 1997. The EIS assesses geologic/lava/earthquake hazards, botanical resources, fauna resources, visual and scenic resources, and the socioeconomic environment.

16. The SMA project area lies in Lava Hazard Zone 2.

17. The use of fuel-powered generators causes noise pollution in the project area, including the SMA project area, and may contribute to pollution of coastal waters. Similarly, the improper disposal of batteries used in solar electric systems may contribute to pollution of coastal waters. The batteries themselves may pose safety hazards to users.

18. Many members of the public have expressed a strong interest in obtaining electrical services through the SMA portion of the project.

19. An archaeological resource study was conducted for the project by Cultural Surveys Hawaii. Archaeological consultants confirmed the absence of historic sites within the project alignment and within the project area overall.

20. The County of Hawaii Civil Defense Department is prepared to assist residents and respond to coastal hazards and natural disasters in the SMA project area.

21. The viewpoint-shoreline at Keekee is identified in the County of Hawaii General Plan Support Document (Exhibit C), Natural Beauty Element on page 32, as one of the examples of natural beauty in the Puna district.

22. The majority of the 9100 linear feet within the SMA portion of the project is located at the makai end of Kehena Beach Estates.

23. The SMA fronts the Puna Beach Palisades subdivision and is limited to the makai side of Highway 137.

24. There is minimal vegetation to soften the visual impacts of the poles and lines in Kalapana Sea View Estates. However, only a small portion of Kalapana Sea View Estates is located within the SMA project area. The lines outside the SMA project area have been energized and will remain in place even if an SMA permit is not granted.

25. Poles and lines may not be visible from portions of Kehena Beach. The SMA project area has been used only once as a location for a commercial filming production.

26. Underground installation is very costly. The cost of undergrounding the entire project is approximately \$13 million. The cost of undergrounding the portion of the project along the Red Road is approximately \$1.56 million.

27. Underground installation also has adverse environmental impacts. Many trees would need to be removed in order to dig the trenches for lines and the manholes necessary to service the lines in the future.

28. The Special Subdivisions Project Provisions ("SSPP") program was instituted in 1985 to provide electrical service to rural subdivisions. The three subdivisions, portions of which are in the SMA, qualify for the SSPP program under Rule 13-S.

29. Rule 13-S specifically applies to the construction of overhead distribution lines. Underground lines may be installed under Rule 13-S only as a "special facility" requiring payment by the subscriber(s) or other party requesting underground installation. Neither the subscribers nor FORR, the requesters, has indicated a willingness to pay for underground installation.

30. HELCO would be required to obtain approval from the Public Utilities Commission, and obtain a sufficient number of subscribers, in order to discontinue the present SSPP project and implement a revised SSPP project with the cost of underground installation shared by all subscribers.

31. Any conclusion of law hereafter determined to be a finding of fact is hereby found as a fact.

CONCLUSIONS OF LAW

32. Any finding of fact hereafter determined to be a conclusion of law is hereby made a conclusion of law.

Procedural Rulings

33. Pursuant to Rule 4-18(b), the Presiding Officer shall rule on evidentiary matters.

34. Roger Christie is permitted to cross examine witnesses on behalf of Michael Marlin.

35. No party is permitted to put on lay witnesses whose names did not appear on the list of witnesses due May 14, 1997.

36. No party is permitted to submit, as part of the contested case proceeding, letters or written testimony authored by persons unavailable for cross examination during the contested case proceeding, unless the letter is incorporated in a document properly submitted as an exhibit (e.g., letters reproduced in the EIS).

37. No party is permitted to submit, as part of the contested case proceeding, exhibits not listed on the exhibit list due May 29, 1997.

38. Pursuant to discussion and agreement in the proceedings, the parties may submit exhibits and written testimony, including that excluded by evidentiary rulings made by the Hearing Officers in the contested case proceeding, as part of the public testimony allowed prior to and after the contested case proceeding.

39. Expert witness testimony proffered by FORR from Gary Barnes and K.K. Greenlee is permitted. FORR did not submit expert witness reports in conformance with the Prehearing Conference Order. However, FORR provided sufficient notice to the other parties and the Hearing Officers concerning the identity of the witnesses and substance of their expected testimony.

40. FORR is permitted to submit its Prehearing Brief June 3, 1997, after the date agreed upon in the first Prehearing Conference, and after the date indicated by counsel for FORR in the second Prehearing Conference.

41. FORR's request for a continuance of the hearing date is denied. Under Rule 4-7(d), petitioners are to be prepared to proceed with a contested case hearing as soon as their standing is established. Here, FORR was given eight weeks from the date of the public hearing when its petition was granted to prepare its case.

SMA Use Permit Criteria

42. An SMA major use permit is required for the SMA portion of the project.

43. The Planning Commission may approve the SMA use permit upon making three findings per Rule 9-11(C)(1)-(3), "Grounds for Approval of Special Management Area Use Permit," of the Rules of Practice and Procedure of the County of Hawaii Planning Commission.

44. Under Rule 9-11(C)(1), the Commission must find the development will not have any significant adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest.

45. Under Rule 9-11(C)(2), the Commission must find the development is consistent with the objectives and policies as provided by Chapter 205A HRS, and the Special Management Area guidelines as contained herein.

46. Under Rule 9-11(C)(3), the Commission must find the development is consistent with the General Plan, Zoning Code, and other applicable ordinances.

47. No SMA Use Permit is required for the portion of the project not in the SMA. Only the SMA portion of the project is required to meet the criteria of Rule 9-11(C)(1)-(3). The Coastal Zone Management Law, Hawaii Revised Statutes Chapter 205A, provides in Part II for Special Management Areas. In Part II, "development" is defined as "any of the uses, activities, or operations on land or in or under water within a special management area" Haw. Rev. Stat. § 205A-22 (emphasis added).

Rule 9-11(C)(1)

48. The SMA portion of the project satisfies Rule 9-11(C)(1).

49. The Hearing Officers conclude that the SMA portion of the project will not have a significant adverse environmental or ecological effect except as such adverse effect is

minimized to the extent practicable. The Commission finds that undergrounding the lines in the SMA project area is not practicable.

50. Any adverse environmental or ecological effects are outweighed by public health and safety interests. The use of fuel-powered generators causes noise pollution in the project area, including the SMA project area, and may contribute to pollution of coastal waters. Similarly, the improper disposal of batteries used in solar electric systems may contribute to pollution of coastal waters. The batteries themselves may pose safety hazards to users.

51. Any adverse environmental or ecological effects are outweighed by a compelling public interest. Many members of the public have expressed a strong interest in obtaining electrical services through the SMA portion of the project.

Rule 9-11(C)(2)

52. The SMA portion of the project satisfies (1) the Chapter 205A objectives and policies concerning recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, and coastal hazards, and (2) the Rule 9-7 SMA Guidelines, in full compliance with Rule 9-11(C)(2).

Chapter 205A Objectives and Policies

53. Recreational Resources, Haw. Rev. Stat. §§ 205A-2(b)(1); (c)(1). The SMA portion of the project presents no significant concerns with regard to recreational resources. The project does not in the short or long run interfere with the use of any existing recreational areas or with the development of future recreational areas in the project area.

54. Historic Resources, Haw. Rev. Stat. §§ 205A-2(b)(2), (c)(2). The SMA portion of the project presents no significant concerns with regard to historic resources. There will be no impacts to known cultural resource sites.

55. Scenic and Open Space Resources, Haw. Rev. Stat. §§ 205A-2(b)(3), (c)(3). The Keekee viewpoint is not adversely impacted by the project.

56. The majority of the 9100 linear feet within the SMA portion of the project is located at the makai end of Kehena Beach Estates. View impacts within Kehena Beach Estates are satisfactorily mitigated by foliage.

57. The SMA fronts the Puna Beach Palisades subdivision and is limited to the makai side of Highway 137. There is minimal impact on ocean views since most of the poles and lines are located on the mauka side of Highway 137.

58. Kalapana Sea View Estates is considered to be the most affected by the introduction of the overhead system. This is due to the fact that there is minimal vegetation to soften the visual impacts of the poles and lines. However, only a small portion of Kalapana Sea View Estates is located within the SMA project area. The lines outside the SMA project area have been energized and will remain in place even if an SMA permit is not granted. The long term impact within the Kalapana Sea View Estates will be minimized by the growth of trees and foliage within the subdivision.

59. For each of the subdivisions, the replacement of the existing GTE poles and lines with the HELCO overhead system will mitigate view impacts.

60. Underground installation of the SMA portion of the project is not feasible or practical and is rejected as a condition to the SMA permit due to its cost and adverse environmental impacts.

61. Coastal Ecosystems, Haw. Rev. Stat. §§ 205A-2(b)(4), (c)(4). The SMA portion of the project will not result in adverse impacts to the SMA project area coastal ecosystem, including botanical and faunal resources.

62. Economic Uses, Haw. Rev. Stat. §§ 205A-2(b)(5), (c)(5). The SMA portion of the project presents no significant concerns with regard to economic uses. HELCO analyzed four alternative routes prior to selecting the present route. The present route follows the route of pre-existing telephone poles and lines and is superior in terms of cost and environmental considerations.

63. The SMA portion of the project presents no significant concerns with regard to film industry use of the SMA project area.

64. Coastal Hazards, Haw. Rev. Stat. §§ 205A-2(b)(6), (c)(6). The SMA portion of the project presents no significant coastal hazard concerns.

65. The SMA project area presents no unique weather- or natural hazard-related concerns relative to the surrounding area.

66. The County of Hawaii Civil Defense Department is prepared to assist residents and respond to coastal hazards and natural disasters in the SMA project area.

67. The threat of lava inundation does not pose a significant concern for the purposes of evaluating the permit application. Areas near the SMA project area, and other areas on the Big Island, face the threat of lava inundation or may be designated as Lava Hazard Zone 2.

68. The SMA portion of the project presents no significant wind-related concerns. At a minimum, the SMA project area poles are designed to withstand wind speeds of 56 miles per hour. The poles may withstand wind speeds of up to 70 miles per hour. The State of Hawaii Department of Transportation standard for wind- and seismic-loading for signs does not apply to utility facilities.

69. The SMA portion of the project presents no significant tsunami concerns. The area makai of the Red Road is delineated as a tsunami evacuation area.

70. The SMA portion of the project presents no significant storm wave or erosion concerns. The three subdivisions are located on cliffs of sufficient height that impacts from storm waves and erosion at the base of the cliffs is of little concern.

Rule 9-7 SMA Guidelines

71. The project satisfies each of the SMA Guidelines contained in Rule 9-7.

72. Scenic Resources, Rule 9-7(A)(4). The SMA portion of the project will not substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast, or from other scenic areas identified in the General Plan.

73. Wildlife Habitats, Rule 9-7(A)(5). The SMA portion of the project will not adversely affect wildlife habitats.

74. Scenic Amenities, Rule 9-7(C)(4). The SMA portion of the project will cause minimum adverse effect to scenic amenities.

75. Adverse Environmental Impacts, Rule 9-7(C)(5). The SMA portion of the project's adverse environmental or ecological impacts, if any, are minimized to the extent practicable.

Rule 9-7(A)

76. Any development which would substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast or from other scenic areas identified in the General Plan.

Rule 9-11(C)(3)

77. The SMA portion of the project is consistent with the County of Hawaii General Plan, including the following goals, policies, standards and courses of action:

Economic Element

- * 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.

Public Utilities

- * Ensure that adequate, efficient and dependable public utility services will be available to users.
- * Provide utilities and service facilities which minimize total cost to the public and effectively service the needs of the community.
- * Improvement of existing utility services shall be encouraged to meet the needs of users.
- * There shall be a minimization of obstruction of scenic views and vistas by electrical facilities.

Land Use Element

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with social, cultural and physical environments of the County.

- * The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

78. The project is consistent with applicable zoning codes. Kehena Beach Estates is zoned Agricultural-1 acre (A-1a) with the exception of TMK 1-2-30:1, which is zoned Open. Areas makai of Highway 137 fronting Puna Beach Palisades and Kalapana Sea View Estates are zoned Open. Utility lines are a permitted use in Open-zoned districts. Surrounding parcels are zoned Agricultural-3 acres (A-3a) and used mainly for dwelling purposes.

Other

79. FORR waived the argument in its Prehearing Brief concerning its members' alleged "investment backed expectations."

80. Michael Marlin presented insufficient evidence at the hearing concerning his alleged "investment backed expectations."

81. Based on witness testimony, none of the affected subdivisions were intended to be "solar" communities, i.e., communities relying solely or primarily upon solar electricity.

DECISION AND ORDER

Upon review of the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED by the Planning Commission that the Application of HAWAII ELECTRIC LIGHT COMPANY, INC., for a Special Management Area (SMA) Use Permit to allow installation and energizing of a SSPP Unit-71 12.47/7.2 KV overhead distribution system of poles and lines and related improvements be APPROVED.

The approval of this request is subject to the following conditions:

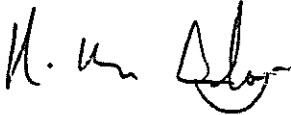
1. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of the proposed project shall be completed within two (2) years from the effective date of the permit.

3. Tree removal and the trimming of trees shall only be conducted only as needed and to help avert threats to public safety and power outages.
4. The use of pesticides and herbicides in conjunction with all phases of operation shall conform with the applicable regulations of appropriate governmental agencies.
5. 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.
6. Should any unidentified sites or remains, such as lava tubes, artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or wall be encountered, work in the affected area shall cease and the Planning Director immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
7. Upon compliance with applicable conditions of approval, the applicant shall submit a final status report, in writing, to the Planning Director.
8. An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:
 - A. 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 the 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).

Lisa Woods Munger, Esq.
Douglas A. Codiga, Esq.
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Should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

xc: Mr. Daniel Bona and Mr. Ron Overmann
Patricia O'Toole, Esq.
Virginia Goldstein, Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Office of State Planning, CZM Program
Department of Land and Natural Resources
Frederick Giannini, Esq.
HELCO

EFFECTIVE DATE: July 24, 1997