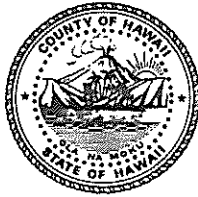


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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CERTIFIED MAIL

September 15, 1993

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Management Area (SMA) Minor Permit No. 93-19
Shoreline Setback Area Minor Activity Determination
Proposed Construction of Single Family And Ohana
Dwellings And Lateral Public Access Easement
TMK: 5-9-01: 8; Kahualiilii, North Kohala, Hawaii

We have received on June 14, 1993, and reviewed a Special Management Area (SMA) Use Permit Assessment Application for the proposed construction of a one-story, four bedroom single family dwelling and a two-story one bedroom ohana dwelling, and for the establishment of a perpetual lateral access easement along the shoreline of the 28.88 acre subject property at Kahualiilii, North Kohala. The main dwelling will be built 60+ feet mauka of the certified shoreline, 20 feet southwest of the northern property line and over 500 feet makai of the highway frontage of the property. The ohana dwelling will be located about 80 feet mauka of the main dwelling, about 170 feet from the certified shoreline and adjacent to a four-car garage. Access to all structures will be via an 18+-foot wide paved driveway from the highway. The subject property is located on the makai side of the Akoni Pule Highway (Kawaihae-Mahukona Road), directly across from the entrance to the Kohala Estates Subdivision.

The proposed construction of the two dwellings, garage and driveway appear to be within or next to 4 archaeological features (SIHP Nos. 4015-4018). The location also is to occupy a portion of the approximate location of the Alaloa Trail. Archaeological data recovery and clearance from the State Historic Preservation Division will occur before site alteration activities are begun. While the actual fee interest in the trail location was legally transferred to private ownership pursuant to a stipulation dated April 27, 1929, the public interest in the lateral access remains unresolved. To that end, the applicant has offered to establish a perpetual easement along the coastline to allow public pedestrian access just

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mauka of the certified shoreline through the makai breadth of the 28.88 acre parcel. The subject SMA Minor and a determination of "minor activity" within the minimum 40-foot shoreline setback area are herein given to effectuate the lateral public access and to allow the approval of the proposed construction.

Given the above access easement consideration, we find that the proposed construction of the aforementioned single family dwelling, ohana dwelling, garage, and access driveway from the Akoni Pule Highway are outside the definition of "development" under Planning Commission Rule No. 9, Special Management Area Rules and Regulations. The proposed dwelling and adjacent accessory features are mauka of the shoreline certified January 7, 1993, and are outside the 40-foot shoreline setback area. Therefore, this specific action, as described above and diagrammed in the plot plan, is exempt from further SMA review. The establishment of the perpetual public lateral access easement within the 40-foot shoreline setback area is to be covered under SMA Minor Permit No. 93-19 below. This exemption will take effect upon recordation of the public access easement with the State Bureau of Conveyances, as directed by the conditions of the SMA Minor Permit No. 93-19 below.

SPECIAL MANAGEMENT AREA MINOR PERMIT NO. 91-19

BACKGROUND INFORMATION

Applicant's representative Sidney Fuke, in behalf of property owner Tom Gentry/Gentry Hawaii, Ltd., is applying for a Special Management Area (SMA) Minor Permit to establish a perpetual easement in favor of the State Department of Land and Natural Resources for public pedestrian access along the shoreline of the 28.88 acre subject parcel. This easement is offered by the applicant's client in response to this office's concerns that the Alaloa Trail is platted to run through or next to the building site area for the aforementioned dwellings. Although a recent archaeological survey could not locate the alignment of the trail (this was probably obscured by the later use of the approximate trail alignment by a jeep track), the public will be able to achieve comparable lateral access via the easement. Public access via this easement will be assured, in keeping with the policies, objectives and guidelines of the Special Management Area Rules and Regulations (Planning Commission Rule No. 9), while the applicant will at the same time be authorized to construct the aforementioned dwellings within the SMA.

Further elaboration of the fee ownership of the

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Alaloa/Mahukona-Kawaihae Trail was given in an August 30, 1993, memo to the Administrator of the Division of Forestry and Wildlife, Department of Land and Natural Resources, from the Department of the Attorney General. This memo concludes that the trail is not owned in fee simple by the State of Hawaii due to a Stipulation dated April 27, 1929, in which the trail was exchanged for the Government Main Road through Lots A and B of Land Court Application 1043 Kahualiilii and Waika, North Kohala.

SHORELINE. A shoreline survey map of the whole 28.88 acre subject parcel was certified by the Chairperson of the Board of Land and Natural Resources on January 7, 1993. A 40-foot shoreline setback is determined from this shoreline.

The proposed public pedestrian access easement is to be located as the most seaward portion of the shoreline setback area, extending 6 feet mauka of and parallel to the certified shoreline alignment (and future alignments). This shoreline position is approximately the top of the coastal bluff.

At least initially, the easement is not planned to be significantly improved beyond the placement of public access signs and markings and/or definitions of the location of the easement (perhaps by landscape plantings, in part). As such, we have determined that the establishment of the proposed public access easement, as described and diagrammed in the submitted application materials, is a minor activity as defined in Planning Commission Rule No. 8, Section 8-3(g). Section 8-7(d) excepts such a determined minor activity from the requirement for a Shoreline Setback Variance. Should the landowner or easement beneficiary wish to further improve the easement in the future, a request for a minor structure determination may be made, pursuant to the same or similar sections of Rule 8 and to Rule 9, relating to the SMA.

LAND USE. The subject property bears a State Land Use (SLU) District classification of "Urban" and County zoning of Unplanned. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject parcel and area to the southwest for Low Density Urban uses, and the coastal area proposed for the public access easement is designated for Open Area uses. The surrounding lots on the mauka side of the highway bear a SLU District classification of "Agriculture", County zoning of Unplanned, and General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation of Extensive Agriculture. The land immediately to the northwest, on the makai side of the highway, bear a State Land Use (SLU) District classification of "Conservation" and County zoning of Unplanned. Existing uses are ranching or vacant, with residences established mauka of the highway in the Kohala Estates subdivisions.

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HAZARDS. The Flood Insurance Rate Maps (FIRM), prepared by the Federal Emergency Management Agency (FEMA), identifies the subject area to be affected by the Coastal High Hazard or Tsunami Area ("VE") along a coastal strip about 40-160 feet in width. This zone has a Base Flood Elevation of 6 feet in the area, mauka of which occurs Zone "X", outside the 500-year floodplain. The site plan for the proposed dwellings indicates that neither house pad will be below the 25 foot elevation contour, well outside the "VE" zone. The Lava Flow Hazard Map for the island of Hawaii identifies the area of the subject parcels to be on Kohala volcano in Lava Hazard Zone 9, Zone 1 being the most hazardous zone.

VEGETATION. The vegetation on the subject parcel consists of an open kiawe (Prosopis pallida) forest with understory of grasses, young kiawe and a few other shrubs and seasonal herbs. This vegetation type is predominantly of introduced plants, has been subjected to protracted grazing pressure, and is not expected to contain rare native plant or animal species, based on cumulative observations at similar locations along this part of the Kohala coastline.

HISTORIC STATUS. An archaeological inventory survey report for the subject parcel 7 and parcel 8, totalling about 103 acres, was prepared in February, 1993, and is under review by the Historic Preservation Division of the Department of Land and Natural Resources. Sixty-eight sites consisting of 175 features were located or relocated and evaluated. Of these, only one site was found in the approximate area of the proposed dwellings' construction, at the edge of Site Complex No. 50-10-05-4156. This site is composed of 4 habitation features of limited significance. Archaeological data recovery and clearance from the State Historic Preservation Division will occur before dwelling or driveway ground alteration activities are begun. The Alaloa trail is reported to be in the vicinity as well, but despite specific effort to locate physical evidence of the trail, none was found. It appears that the conversion to a jeep trail has eliminated any of its archaeological features. The only feature mapped along the coastline to be used for the public access easement is a boundary wall.

FINDINGS AND DETERMINATION

Upon review of the request against the guidelines for granting a Special Management Area Permit, the Planning Director hereby approves a Special Management Area Minor Permit. The proposed action is consistent with the Objectives, Policies and SMA

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Guidelines which were established to provide guidance for the preservation, protection, and development of coastal resources of the State and County. They identify several areas of management concern including historic, recreation, scenic resources, coastal ecosystems, economic use, and coastal hazards.

The proposed establishment on the subject property of a 6-foot wide public access easement along the certified shoreline, within the 40-foot shoreline setback area, is not expected to have any detrimental effects on the Special Management Area, as determined from the following findings and conditions.

The total valuation of the project will not exceed \$125,000; and the proposal will not result in a significant adverse effect on the Special Management Area.

The certified shoreline lies immediately makai of the proposed easement, and the intent of the easement is to provide lateral public access through the subject parcel along the shoreline. Lateral public access will remain unimpeded along the coast here even if the shoreline recedes, as the makai boundary of the easement is the current or most recent certified shoreline, and the 6-foot width "floats" mauka of the certified shoreline. The perpetual aspect of this public pedestrian access easement will be maintained as an encumbrance on the 28.88 acre property in favor of the State Department of Land and Natural Resources, as recorded with the State Bureau of Conveyances. Public access via this easement will be assured, in keeping with the policies, objectives and guidelines of the Special Management Area Rules and Regulations (Planning Commission Rule No. 9).

Considering the prolonged shoreline exposure of the easement and the past replacement of the native vegetation with mostly introduced species, it is highly unlikely that any rare or endangered species of plant or animal exist on the site.

Similarly, no significant historic sites were observed or are expected to be negatively affected by the easement. Given the relative paucity of features at the proposed house sites and public access easement, the degree of analysis completed for the survey report, and the data recovery which should occur before ground disturbance is initiated, it is believed that the proposed activities will not be detrimental to the overall historic condition of the site complex.

We have also determined that the proposed establishment of a public access easement is an exempt class of action which does not require the preparation of an Environmental Assessment under Chapter 343, Hawaii Revised Statutes.

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Based on the above findings, the limited nature of the project, and given the proposed conditions, the granting of this request will not impact the identified resources. Therefore, the granting of this request will not be contrary to the purpose and intent of Chapter 205-A, HRS, relating to Coastal Zone Management; Rule 9 of the Planning Commission relating to the Special Management Area; or the General Plan.

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

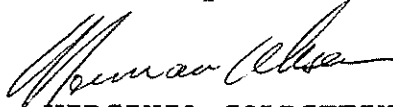
1. The applicant, its successors or assigns shall be responsible for complying with all conditions of approval.
2. The applicant shall comply with all other applicable laws, rules, regulations and requirements.
3. The life of authorization of this permit is two years. However, the intent of the established pedestrian access easement along the coastline of the subject property is perpetual. Planning Commission Rule No. 8, Section 8-7(d)(2), requires that the minor activity (the establishment of the public access easement, including recordation) shall be completed within one year of the date of the Department's determination that the proposed project is a minor structure (and the same date as this SMA Minor Permit).
4. Any deviations from the proposed project as explained in body of this permit will require advance approval from the Planning Department.
5. Five copies of the legal easement description in favor of the State Department of Land and Natural Resources for public pedestrian access purposes over and across the 28.88 acre land of Lot 4A, Land Court Consolidation No. 129, and the associated survey map(s), as described herein, shall be provided for recordation with the State Bureau of Conveyances and for residence in the files at the Hilo and Kona offices of the Planning Department and in the files of the Hilo and Honolulu offices of the Department of Land and Natural Resources. The intent is for the term of this easement to be perpetual and binding upon the landowner, successors and assignees, and for the pedestrian public to have continuous lateral shoreline access across the subject property, and any future subdivision thereof.

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6. The effective date of the SMA exemption for the proposed construction of the two aforementioned dwellings shall be the date of recordation of the perpetual public access easement described in Condition 5 above.
7. At least two Planning Department approved public shoreline access signs shall be erected at or near the northwest and southwest ends of the subject parcel along the public access easement, to be kept plainly visible to the public traveling along the shoreline.

Should you have any questions about this permit, please contact Rick Warshauer or Rodney Nakano at this office.

Sincerely,


for VIRGINIA GOLDSTEIN
Planning Director

 9/21/93
Chief Engineer Date

FRW:mjh
4138Q

xc: DLNR/Na Ala Hele, Hilo, w/attachment
DLNR/Na Ala Hele, Honolulu, w/attachment
Dawn N.S. Chang, Deputy A.G.
West Hawaii Office, w/attachment
SMA Section