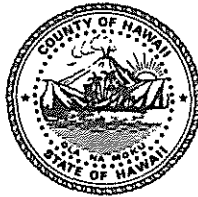


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL

March 11, 1994

COPY

Mr. Daniel J. Lutkenhouse
Hawaii Tropical Botanical Garden
248 Kahoa Road
Hilo, HI 96720

Dear Mr. Lutkenhouse:

Special Management Area (SMA) Minor Permit No. 5
Applicant: Hawaii Tropical Botanical Garden
Proposed Rain Shelter and After-the-fact Site Improvements
TMK: 2-7-9:2; Onomea, South Hilo, Hawaii

Pursuant to our letter dated November 22, 1993, we had determined that a Special Management Area (SMA) Minor Permit is required for the proposed rain shelter and after-the-fact site improvements on the subject property. Accordingly, based on the following background and findings, we hereby issue SMA Minor Permit No. 5 with conditions.

BACKGROUND

1. Hawaii Tropical Botanical Garden is requesting a Special Management Area (SMA) Minor Permit to allow the construction of a proposed rain shelter and to allow the existing after-the-fact site improvements and uses that have been incorporated into the existing arboretum and botanical garden. The property, consisting of approximately 17.724 acres, is located between the Old Mamalahoa Highway (4 Mile Scenic Route) and Onomea Bay within the land divisions of Onomea, Kahalii and Alakahi, South Hilo, Island of Hawaii, TMK: 2-7-9:2.
2. In March 1992, the applicant was advised by the Chairman of the Board of Land and Natural Resources that the existing zoological garden, aviary and wooden exhibition stands, the small lake with carp, and advisory signs were not approved or allowed under an existing Conservation District Use

MAR 15 1994

Mr. Daniel J. Lutkenhouse
Page 2
March 11, 1994

Permit (CDUP HA-1447) which was previously approved on July 9, 1982 for the arboretum and garden. In addition, the Chairman instructed the applicant to update the existing CDUP by filing an after-the-fact Conservation District Use Application for the above-mentioned site improvements and uses.

3. Specifically, the project includes the following:
 - A. Construction of a new 20 x 30-foot educational rain shelter which will consist of wooden support posts, a corrugated metal roof, and gravel floor. The proposed rain shelter will be of post and pier construction and will be situated in the vicinity of the existing bird pond.
 - B. Retention of a zoological garden that includes 6 Macaw birds, 11 Flamingos, 4 ducks, and a related pond that is approximately 12-feet in diameter and 8-inches deep.
 - C. Retention of an aviary consisting of three 8 x 8 x 8-foot bird cages housing the 6 Macaw birds, and wooden exhibition stands.
 - D. Retention of Lily Lake which is approximately 50 x 70 feet and 3-feet deep and contains fresh-water carp and plants.
 - E. Retention of 3 portable 18-inch x 2-feet "No Trespassing" signs located near the shoreline.

The cost of the improvements is estimated to be \$7,000.

4. The applicant states the following objectives and reasons for the project.

The incorporation of the zoological garden and Lily Lake features "was to provide an enhanced visitor experience and understanding of tropical botanical resources. Lily Lake, for example, was built to provide visitors with a glimpse of fresh-water tropical plants. The carp in the pond serve to help maintain the water quality of the fresh-water botanical environment which is indicative of the ecological balance and relationships that exist in most, undeveloped tropical areas. The display of Macaws, Flamingos, and ducks provides visitors with a more complete understanding of the role of botanical plants

which, in part, is to provide habitat for various types of tropical birds."

The educational rain shelter "will be used primarily for presenting lectures to selected groups of incoming visitors such as school-aged children. The Garden currently provides no-cost tours to local school children in order that they may be instructed first-hand about the values of tropical plants and animals."

"Three portable advisory signs... have been placed near the shoreline to discourage trespassers from entering the Garden site. Garden management and operations personnel have had to confront malicious vandalism and theft by various persons which have trespassed onto Garden property.... However, these signs do not discourage public shoreline access along the foot path that is situated along the northeast side of Onomea Stream."

5. Conservation District Use Permit (CDUP) HA-1447 reserved the right of the Department of Land and Natural Resources (DLNR) to assess safe access to the shoreline. The CDUP also noted an established public access to the north of the botanical garden and Onomea Stream on Tax Map Key 2-7-10:22, which could be used if safe access was not possible on the garden property. According to an August 12, 1981 letter, a field check of the botanical garden parcel by DLNR staff recommended that the Board not require public easements due to the hazardous and unsafe nature of the shoreline.
6. Previous SMA Minor Permits have been issued in connection with development of the existing botanical garden. On February 2, 1979, SMA Minor Permit No. 79-7 was issued allowing land clearing for topographic purposes in order to establish a pathway and trail system. SMA Minor Permit No. 82-28 was issued on July 2, 1982 to allow the establishment of an arboretum and botanical garden including the construction of rain shelters, reception booth, gate, wooden benches, utility shed and plant nursery. Condition No. 6 of that permit was later amended to include the following condition upon finding that the strict provision of lateral shoreline access on the property was not practical considering existing shoreline conditions and that there is an existing well used and safe access trail ("Donkey Trail") along the north side of Onomea Stream.

"Public access to and along the shoreline shall not be impeded by the applicant, his heirs or assignees."

Mr. Daniel J. Lutkenhouse
Page 4
March 11, 1994

7. Subsequently, SMA Minor Permit No. 85-38 was issued on September 30, 1985 for the construction of a 12-foot wide paved access driveway with CRM retaining wall and a parking lot on the subject parcel. However, the proposed access driveway was never constructed and said SMA Permit was not utilized within a two-year period from the date of issuance. Therefore, that SMA Permit was considered void. SMA Minor Permit No. 88-20 was issued on October 18, 1988 for the construction of two restrooms and a cesspool at the botanical garden site. It should be noted that due to the existing "Donkey Trail" for public access, the foregoing SMA permits were also approved with the same condition that public access to and along the shoreline shall not be impeded.

STATE AND COUNTY PLANS

8. The State Land Use District classification is Conservation.
9. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the area for Open and Extensive Agricultural uses. In addition, the General Plan Natural Beauty Element lists the Onomea Bay area as an example of natural beauty.
10. The County zoning designation is Agricultural-20 acres (A-20a).
11. The property is located within the Special Management Area. The proposed rain shelter and existing after-the-fact site improvements and uses require an SMA Permit.
12. The State Department of Land and Natural Resources filed a Final Environmental Assessment-Negative Declaration determination with the Office of Environmental Quality Control and was published in its March 8, 1994 bulletin. Therefore, the requirements of Chapter 343, HRS, relating to Environmental Impact Statements have been satisfied.

DESCRIPTION OF PROPERTY AND SURROUNDING AREA

13. The property with its irregular shoreline is situated mauka of Onomea Bay. It is traversed by the Onomea, Kahalii and Alakahi Streams. The southern portion of the property is characterized by steep cliffs ranging in height to approximately 100 feet.

Mr. Daniel J. Lutkenhouse
Page 5
March 11, 1994

14. The property rises from approximately three feet above mean sea level at the shoreline to about the 100-foot elevation along the Old Mamalahoa Highway. Steeper slopes, immediately downslope of the highway, average from 35 to 50 percent. The area of the project activities generally range from 0 to 10 percent.
15. According to the Soil Survey Report published by the U.S. Department of Agriculture, Soil Conservation Service, the soil is classified as Rough Broken Land. The soil is a miscellaneous land type consisting of steep precipitous land broken by intermittent drainage channels. It occurs primarily in gulches.
16. The Flood Insurance Rate Map (FIRM), prepared by the Federal Emergency Management Agency, designates the area to be within a minimal tsunami inundation area.
17. Vegetation on the property includes a collection of some 10,000 cultivated plants and trees, representing roughly 1,800 different species. Original vegetative trees include mango, hala, monkeypod, coconut, Alexandra palms, ulu and false kamani. The understory vegetation includes strawberry guava, naupaka, lauae, warabi, vines, California grass and various weeds.
18. There are no known rare or endangered species of flora and fauna on the property.
19. No archaeological inventory survey has been conducted on the property. According to historical records numerous taro lo'i and a number of house sites were part of a former Hawaiian fishing and farming community called Kahalii which was situated on the property. A few graves are located on the property near the shoreline area.
20. In March 1993, the State Department of Land and Natural Resources commented that historic sites were quite likely to be present on the subject property. "These historic sites could possibly include buried deposits (e.g., taro lo'i deposits), and the presence of any remnants of such deposits would be extremely important as we virtually have no recently archaeological information on the Hilo area's prehistory....Such cultural deposits, if they existed, would have been likely to have been adversely affected by the bird pond, aviary, and Lily Lake after-the-fact improvements, and it is now too late to undertake any mitigative measures." That agency also indicated that the three advisory signs and

the proposed rain shelter, are likely to have "no effect" on significant historic sites as minimal ground disturbances are anticipated. In sum, the agency stated that "the subject application will have 'no effect' on historic sites; however, ... future projects in the garden south of Onomea Stream entailing extensive alteration of the present ground surface, will require an archaeological inventory survey. The findings of the survey will need to be submitted to our office in report format for review, and if significant archaeological sites are present then a mitigation plan consisting of data recovery and/or preservation plan will also have to be submitted to our office for comment and approval."

21. According to the applicant, the only public road within the Hawaii Tropical Botanical Garden (HTBG) is a road remnant of the old Government Road, sometimes referred to as the "Jeep Trail". There is no public access from the Old Mamalahoa Highway to the old Government Road remnant. The existing driveway into the garden was resurveyed in May 1993 by the applicant's surveyor. The survey information was confirmed by the State Surveyor on February 18, 1994, indicating that "substantial portions of the road, which were formerly situated along the cliffs, have eroded away. The road remnant ends at a point along the banks of Onomea Stream where it drops approximately 30 feet to the Stream below."
22. With regards to prohibiting public access from the remnant of the old Government Road, the road remnant is presently landlocked. The portion of the old Government Road, no longer exists. The public and a limited number of shoreline fishermen presently access the Onomea shoreline via the "Donkey Trail" along the north side of Onomea Stream.
23. The surrounding land uses include agricultural activities and vacant lands.

PUBLIC UTILITIES AND SERVICES

24. Access to the property is from the Old Mamalahoa Highway which has a 50-foot right-of-way with a 17-foot wide pavement.
25. Public water, wastewater collection and other essential utilities and services are not available to the project site.

Mr. Daniel J. Lutkenhouse
Page 7
March 11, 1994

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 based on the following findings:

The purpose of Chapter 205A, HRS, and Planning Commission Rule No. 9, Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect and, where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

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 proposed action is consistent with the Objectives, Policies and SMA 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 after-the-fact site improvements have been in existence for several years. The proposed improvements will not involve any loss or destruction of historic or cultural resources as there will be minimal ground disturbances on the property. The after-the-fact site improvements and the proposed rain shelter are not anticipated to have any significant adverse environmental or ecological effect.

Public access to the shoreline from the Old Mamalahoa Highway is via an existing trail ("Donkey Trail") along the north side of Onomea Stream and the botanical garden property. In the early 1980's it was found that provision for public shoreline access within the garden property was not practical due to the hazardous and unsafe nature of the shoreline.

The proposed project is consistent with the County's General Plan and the Zoning Code. The proposed rain shelter and the after-the-fact site improvements have been incorporated in the existing arboretum and botanical garden. Such use is permitted in the Open and Agricultural zoned districts.

Mr. Daniel J. Lutkenhouse
Page 8
March 11, 1994

Based on the above findings, the limited nature of the project and given the conditions of approval, it is determined that the granting of this request would not affect shoreline views, public access, and the environment or ecology of the shoreline area. Therefore, the granting of this request will not be contrary to the purpose and intent of Chapter 205A, HRS, relating to Coastal Zone Management; Rule No. 9 of the Planning Commission relating to the Special Management Area; the Hawaii County Zoning Code; or the General Plan.

A Special Management Area Minor Permit is further approved 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. The applicant, successors, or assigns shall secure a Conservation District Use Permit from the Board of Land and Natural Resources.
3. The applicant, successors, or assigns shall secure, if applicable, building permits from the Department of Public Works.
4. Construction of the proposed improvements shall be completed within two years from the date of approval of a Conservation District Use Permit.
5. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department in coordination with the State Historic Preservation Division.
6. Public shoreline access via the "Donkey Trail" shall not be impeded.
7. The applicant, successors, or assigns shall comply with all other applicable County, State and Federal rules, regulations and requirements.
8. A progress report shall be submitted to the Planning Director within six (6) months from the date of this permit. The report shall include, but not be limited to, the status of the project and to what extent the

Mr. Daniel J. Lutkenhouse
Page 9
March 11, 1994


conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further progress reports are not required.

9. An extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances: (a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; (b) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and (c) 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).

Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

Should you have any questions, please feel free to contact Alice Kawaha of this office at 961-8288.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director


DONNA KIYOSAKI
Chief Engineer

3-14-94
Date

AGK:pak
A:\SMM5

xc: Mr. Steven Lim
Dr. Don Hibbard, DLNR-Historic Preservation Division
Ms. Donna Kiyosaki, Chief Engineer
Planning Commission
SMA Section