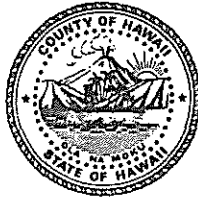


Stephen K. Yamashiro
Mayor



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

May 3, 1996

Mr. F. Robert Insinger
RR2 Box 3917
Pahoa, HI 96778

Dear Mr. Insinger:

Special Management Area Use Permit Assessment Application

No. 96-23 (SMAA 96-23)

Special Management Area Minor Use Permit No. 43 (SMM 43)

Applicant: F. Robert Insinger

Request: Grading and Fill Activities within an

Approximately 0.3 acre Portion of Subject Property Involving

Approximately 914 Cubic Yards of Earth

Tax Map Key: 1-4-27:Pors. of 2, 24 and 35, Kapoho Beach Lots Subdivision, Puna, Hawaii

We are in receipt of the above-described application on March 15, 1996, to allow the grading and fill of approximately 0.3 acre within portions of the subject properties and involving approximately 914 cubic yards of material for the purpose of storm wave protection. The proposed grading and fill activities would not exceed \$125,000 in valuation. It has been determined that the proposed activity will not have an significant adverse impact to coastal resources provided all appropriate governmental approvals are secured by the applicant. Therefore, we are hereby issuing Special Management Area Use Permit No. 41 to allow the proposed grading and fill activities, for the reasons as detailed below.

BACKGROUND INFORMATION

1. **Land Ownership:** The subject properties are owned by the Virginia C. Hayes, Trust. The applicant is the trustee for the estate.

APPLICANT'S REQUEST

2. **Request:** The applicant proposes to conduct grading and fill activities within a portion of the project site affecting approximately 0.3 acre of land and involving approximately 914 cubic yards of material (hereinafter referred to as "activities"). The material to be used will consist mostly of large rocks which can withstand the force of the storm waves. According to plans submitted with the application, the proposed activities will affect a roughly triangular area having a minimum width of about 45 feet at its mauka end to a width of about 160 feet at its makai end. Its length running mauka-makai is roughly 160 feet. The maximum height of the fill is about five feet from existing grade which will be blended into the surrounding topography so that it would not severely detract from the general topography of the surrounding area. The applicant has agreed to relocate the proposed activities at least 40 feet mauka of the shoreline as certified by the Chairman of the Board of Land and Natural Resources on August 28, 1995.
3. **Reason for Request:** The purpose of the grading and fill activities are to protect the project site from storm waves which have impacted the site in the past. The proposed activities will fill a low-lying spot within the project site which, according to photos provided by the applicant, have become totally inundated during storm wave events.
4. **Total Valuation:** According to the application, the proposed activities are anticipated to cost about \$8,000.

STATE AND COUNTY PLANS

5. **State Land Use District:** The subject properties are designated Urban by the State Land Use Commission.
6. **General Plan:** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject properties for Low Density Urban uses, which would allow for uses which are single family residential in character, ancillary community and public uses, and convenience type commercial uses."
7. **County Zoning:** The subject properties are designated Single Family Residential-10,000 square feet (RS-10) by the County Zoning Code.
8. **Special Management Area (SMA):** The subject properties are located within the County's Special Management Area. Therefore, this Special Management Area Minor Use Permit is being issued in satisfaction of Rule No. 9 of the Planning Commission regarding the Special Management Area.

DESCRIPTION OF THE PROPERTIES AND SURROUNDING AREA

9. **Subject Properties:** The area to be grubbed will affect three separate properties. The majority of the proposed activities will occur within Parcel 2, which consists of 87,915 square feet of land and Parcel 24, consisting of 95,028 square feet. A small portion of the activities may affect Parcel 35, consisting of 48,211 square feet. All three parcels will hereinafter referred to as "project site".
10. **Existing Use:** The subject properties are currently vacant of any use. A relatively light ground cover of various weeds and grasses cover the majority of the project site. Coconut, ironwood and other types of exotic trees are scattered throughout the property. An anchialine pond is centrally located within the project site near the shoreline and immediately adjacent to the southwest of the proposed grading and fill activities. The applicant has indicated that the anchialine pond will not be touched. The low-lying area to be graded and filled has a pahoehoe lava base with a relatively dense cover of grasses. An April 18, 1996 site inspection by Planning Department staff during high tide found this low-lying area to be underwater. It appears that water within the low-lying area is tidal-influenced. Water also infiltrated into the affected area through a small natural channel from the ocean, a channel which was not noticed during earlier site inspections apparently conducted during low tide.
11. **USDA Soil Survey Report:** According to the Soil Conservation Service's Soil Survey for the Island of Hawaii, soil within the subject property consist of Pahoehoe Lava. The shoreline portions of the project site consist of lava rubble and small quantities of black sand, especially along its northern shoreline frontages.
12. **FIRM:** The Flood Insurance Rate Maps (FIRM) designates that portion of the project site to be affected by the proposed improvements as being located within the Flood Zone "VE" (coastal flood with velocity hazards) and "AE" (100-year frequency flood).
13. **Archaeological/Floral/Fauna Resources:** An archaeological inventory survey of the project site was not conducted by the applicant. The project site is not identified as containing features listed on the Hawaii and National Registers of Historic Places. A complaint regarding the destruction of a "fishing heiau" located within the subject properties was filed with the Planning Department. A site inspection of the alleged "fishing heiau" feature was conducted by staff from the Planning Department and the State Historic Preservation Division with findings yet to be issued. The alleged "fishing heiau" is located within a portion of the project site not to be impacted by the proposed grading and fill activities.

14. **Surrounding Land Use Designation/Uses:** Land uses within the immediate area consist primarily of single family residential uses (Kapoho Beach Lots Subdivision) to the west and south on lands zoned Single Family Residential (RS-10) by the County. The ocean borders the project site to the north and east.

UTILITIES AND SERVICES

15. **Access:** Access to the project site from the Kalapana-Kapoho Road is provided by a series of 40- and 50-foot wide private gravel and paved roadways.
16. **Other Essential Utilities and Services** are not necessary to accommodate the proposed grading and fill activities.

ASSESSMENT

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 island's coastal zone areas. Special controls on development within these areas have been enacted to prevent permanent loss of valuable resources. Upon review of the subject request, the Planning Director finds that the proposed grading and fill activities within portions of the project site are consistent with State and County Special Management Area policies, as outlined below:

- a) **Recreational Resources:** The proposed grading and fill activities within a portion of the project site will not interfere with existing or potential recreational uses of the coastal area fronting the project site. The proposed activities will be located at least 40 feet from the certified shoreline and limited to grading and filling a portion of a low-lying area to blend-in with the topography of the remainder of the project site. No "use" is being proposed within the project site which may conflict with existing or potential recreational uses of the shoreline areas.
- b) **Historical and Natural Resources:** The project site is not known to contain any archaeological feature which have been included on the Hawaii or National Registers of Historic Places. While a potential "fishing heiau" has been located within the project site, it is located outside of the area to be graded and filled. A condition of approval will be included within this permit requiring the applicant to cease all grading and fill work and to notify the Planning Department should he encounter archaeological features or sites. By separate action relating to a complaint, the applicant has agreed to desist from the further destruction of the possible "fishing heiau" site until approval for its destruction is secured from the Planning Department. The State Historic Preservation Division will provide its recommendation regarding the identity of the feature as well as possible mitigation

measures, if required, prior to the issuance of a determination on this matter by the Planning Department. The project site and its surrounding areas are not known as essential habitats for endangered species of plants or animals. A condition of approval within this permit will restrict the applicant from altering any portion of the adjoining anchialine pond. A minimum buffer of five feet from the edge of the anchialine pond will be required. The location of the proposed grading and fill activities within an area suspected as a possible wetland may require approvals from the Army Corps or Engineers. Such approvals, if required, will be made a condition of approval of this permit to ensure that all applicable governmental approvals are secured by the applicant prior to commencing any portion of the proposed activities.

- c) **Scenic and Open Space Resources:** The subject properties are not located within an area recognized by the General Plan as an example of natural beauty. The proposed grading and fill activities will not have any effect upon the County's open space and scenic resources. No structure is being proposed nor would the overall height of the proposed fill affect any existing viewplanes. The current zoning of the project site would allow for the construction of a single family dwelling up to 35 feet in height. At a maximum height of five feet from existing grade, the proposed fill will have negligible effects on any existing scenic and open space resources.
- d) **Coastal Ecosystems:** The proposed activities will be located outside of the 40-foot shoreline setback area within a low-lying portion of the project site. Therefore, the proposed grading and fill activities should not have a direct impact on the nearby shoreline environment. A grading permit will be required by the Department of Public Works, which will review the proposed activity and its conformance with Chapter 10 of the Hawaii County Code regarding Erosion and Sedimentation Control. As previously mentioned, conditions of this approval will prevent the applicant from physically altering the adjoining anchialine pond while also requiring the applicant to secure all relevant governmental approvals, such as those which may be required by the Army Corps of Engineers.
- e) **Economic Uses:** Economic benefits to be realized by the applicant include the protection of property to ensure its potential use as a single family residential homesite. Unless adequately protected by storm waves, use of portions of the project site as a homesite is severely restricted.
- f) **Coastal Hazards:** The project site is located within an area subject to coastal floods with velocity hazards (Zone VE) and 100-year frequency floods (Zone AE). The Department of Public Works, which has reviewed the proposed grading and fill activities, requires compliance with the requirements of Chapter 27, Flood Control Code.

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DETERMINATION

Based on the preceding assessment, the Planning Director has determined that the proposed grading and fill of portions of the project site for storm wave protection would not be contrary to the state and county policies governing the Special Management Area. The Planning Director hereby approves Special Management Area Minor Use Permit No. 43, subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or 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 approval of this permit.
3. A grading permit, if required, shall be secured from the Department of Public Works. The grading and fill activities shall be completed within one (1) year from the date of approval of this permit. The applicant shall notify the Planning Department, in writing, of the completion of the approved grading and fill activities.
4. Applicant shall consult with the Army Corps of Engineers for a determination of requirements under its jurisdiction prior to commencing any portion of the proposed grading at site. The applicant shall be responsible for securing all other applicable governmental approvals.
5. A registered surveyor shall stake and erect a continuous flag ribbon along the 40-foot shoreline setback line based on the certified shoreline survey dated August 28, 1995. No land alteration activities shall be permitted makai of the 40-foot shoreline setback line unless a Shoreline Setback Variance is first secured from the Planning Commission in accordance with its rules.
6. The applicant shall maintain a minimum 5-foot wide buffer from the edge of the anchialine pond located within the project site. High-visibility fencing or a similar type of barrier shall be erected along the 5-foot wide buffer prior to commencing any land alteration activities. The fencing shall remain along the 5-foot wide buffer for the duration of grading and fill activities.
7. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered,

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work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.

8. An extension of time for the performance of conditions within the 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).
9. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

Please feel free to contact Daryn Arai of my staff at 961-8288 should you have any questions.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

DSA:pak

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xc: U.S. Army Corps of Engineers
Ms. Donna Kiyosaki, Chief Engineer
DLNR-Historic Preservation Division
Land Use Controls Division
✓SMA Section