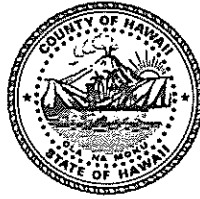


Stephen K. Yamashiro
Mayor



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 6, 1997

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

Dear Mr. Insinger:

Special Management Area Use Permit Assessment Application No. 97-24

Special Management Area Minor Use Permit No. 59 (SMM 59)

Applicant: F. Robert Insinger

Request: Relocation of Existing Trees, Clearing of Weeds & Other Landscaping
Improvements; Construction of Approximately 160 linear feet of
6-foot high Chain Link Fencing

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 April 23, 1997, to allow the relocation of existing trees to another portion of the subject property for wind protection and aesthetics, the establishment of a grass lawn, clearing of weeds and other general landscape maintenance activities. Also, requested is the installation of approximately 160 linear feet of 6-foot high chain link fencing along portions of the subject property boundaries. The proposed landscaping activities and fence installation will not exceed \$125,000 in valuation. It has been determined that the proposed improvements and activities will not have a 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. 59 to allow the proposed landscaping and fencing improvements, 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 relocate existing palm trees within the property to another portion of the subject properties. A grass lawn will be established upon existing fill material; weeds will be cleared and general landscape maintenance will be conducted. Approximately 40±linear feet of 6-foot high chain link fencing is also proposed along the subject properties' northwestern boundaries as well as approximately 120±linear feet along its southern boundaries. No improvements or land alteration activities will occur within the 40-foot shoreline setback area nor will the grade of the land be altered.
3. **Reason for Request:** The proposed landscaping activities will beautify the subject property while providing protection from the various elements, especially wind. The proposed fencing will provide limited security for the subject properties.
4. **Total Valuation:** According to the application, the proposed activities are anticipated to cost about \$2,000.

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 landscaping activities and installation of fencing within portions of the subject properties will not interfere with existing or potential recreational uses of the coastal area fronting the project site. The proposed activities and improvements will be located at least 40 feet from the certified shoreline. No "use" is being proposed within the project site which may conflict with existing or potential recreational uses of the shoreline areas. Lateral shoreline access fronting the subject properties, makai of the certified shoreline, will still be provided. The proposed improvements and landscaping activities will not interfere with continued access along the shoreline.

- b) **Historical and Natural Resources:** The project site is not known to contain any archaeological features that have been included on the Hawaii or National Registers of Historic Places. An alleged "fishing heiau," previously located within the project site, has since been destroyed. An investigation into its destruction has been initiated with findings pending. 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 an anchialine pond situated within the project area. A minimum buffer of five feet from the edge of the anchialine pond will be required.
- 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 landscaping activities and fence construction will not have any effect upon the County's open space and scenic resources. 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 six feet from existing grade, the proposed chain link fencing will have negligible effects on existing scenic and open space resources. The relocation of trees and the clearing of weeds will also enhance the scenic qualities within and along Alapai Point.
- d) **Coastal Ecosystems:** The proposed activities will be located outside of the 40-foot shoreline setback area. The limited nature of the proposed activities will prevent any significant adverse impact upon the coastal resources. As previously mentioned, conditions of this approval will prevent the applicant from physically altering the anchialine pond. It should be noted that landscaping is defined as a "minor activity" which may be permitted within the 40-foot shoreline setback area pursuant to Rule No. 11 of the Planning Department regarding Shoreline Setback.
- e) **Economic Uses:** The proposed activities are not related to the economic use of lands within the Special Management Area.
- 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). All proposed activities and improvements must comply with applicable requirements of the Department of Public Works.

DETERMINATION

Based on the preceding assessment, the Planning Director has determined that the proposed relocation of palm trees, clearing of weeds, the establishment of a grass lawn and the construction of chain link fencing 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. 59, **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. All proposed activities and improvements covered by this permit shall be completed within two (2) years from the date of this letter approval.
4. The applicant shall maintain a minimum 5-foot wide buffer from the edge of the anchialine pond located within the project site. No land alteration or construction activities, landscaping elements or improvements will be permitted within the 5-foot wide buffer area.
5. 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, 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.
6. 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;

Mr. F. Robert Insinger

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- 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).

7. 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:mlm

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xc: Donna Fay K. Kiyosaki, P.E., Chief Engineer
DLNR-Historic Preservation Division
Land Use Controls Division
SMA Section