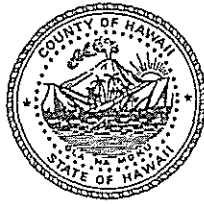


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

December 20, 2004

Mr. Charles A. Wagaman
President, AOA
Bayshore Towers
84 Pukihae St., #1405
Hilo, Hawaii 96720

Dear Mr. Wagaman:

Special Management Area Use Permit Assessment Application (SMAA 04-104)
Special Management Area (SMA) Minor Permit No. 175 (SMM 175)
Applicant: Bayshore Towers, et. al.
Landowners: Bayshore Towers, et. al.
Project: Construction of a Seacliff Retention System
Tax Map Key: (3) 2-6-001:015

By this letter we are transmitting the referenced SMA Minor Permit No. 175, our determination of minor structure or activity in the shoreline setback area, and our exemption from the requirement for the preparation of an Environmental Assessment for the construction of a seacliff retention system.

We note that you have indicated that a shoreline survey will be ordered, however, as the exact location of the shoreline is not necessary to render a determination on your application, we have determined that a certified shoreline survey is not required by the Planning Department for review of the proposed project.

Upon due consideration of the information provided in your SMAA application and the accompanying submittals, your request for a determination of "minor structure or minor activity" in the shoreline setback area, pursuant to Rule 11-8, Planning Department Rules of Practice and Procedure, is hereby granted. This determination is subject to the conditions contained within SMM 175 and is based on the following findings:

1. The Planning Department, in consultation with the U.S. Army Corps of Engineers, State Department of Health – Clean Water Branch and the Office of Environmental Quality

Hawai'i County is an equal opportunity provider and employer.

Mr. Charles A. Wagaman
Bayshore Towers
Page 2
December 20, 2004

Control, and the Department of Land and Natural Resources – Office of Conservation and Coastal Lands, has determined that the proposed project is an exempt class of action as provided for under §11-200-8(a)(1) & (4), Hawaii Administrative Rules. Therefore, the preparation of an Environmental Assessment pursuant to Chapter 343, Hawaii Revised Statutes shall not be required.

2. Proposed improvements within the shoreline setback area shall be limited to the creation of the seacliff retention system described in SMM 175;
3. The proposed project will not affect natural beach processes or artificially fix the shoreline;
4. The proposed project will not interfere with public access to the shoreline in the vicinity of the project site except as necessary to ensure the public welfare and safety during the actual construction period;
5. The proposed project will not adversely impact public views to and along the shoreline except during the construction period; and
6. The proposed use and activity will not result in any permanent alteration to the existing topography of the shoreline area.

Should you have questions, please feel welcome to contact Larry Brown or Esther Imamura of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

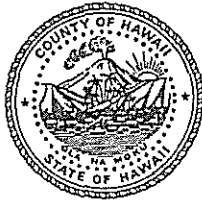
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Encl: SMM 175
DOH Memorandum dated December 3, 2004

xc: Ms. Susan Gagorik – Long Range Planning
Mr. Norman Hayashi – Planning Commission, w/encl.

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

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Special Management Area Minor Permit No. 175

Project: Construction of a Seacliff Retention System
Applicant: Bayshore Towers, et. al.
Land Owner: Bayshore Towers, et. al.
Location: Pu'u'eo, South Hilo, Island & County of Hawai'i, Hawai'i
TMK: (3) 2-6-001:015

Applicant's Request

1. Project Description:

The applicant proposes to construct a seacliff retention system consisting of 28 self-drilling injection micropiles and ground anchors that will secure a 14" x 24" concrete grade beam constructed along the seacliff. Five (5) lower slope anchors will also be installed at various locations along the face of the pali.

2. Purpose of Project:

The project is proposed to halt the severe erosion of the seacliff affecting the subject property so as to prevent the additional loss of land, which has begun to threaten the integrity of some existing improvements.

3. Project Valuation: \$90,000.00

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A), relating to the Special Management Area, "development" includes the following:

- (i) *Placement or erection of any solid material or any gaseous liquid, solid, or thermal waste;*
- (v) *Construction, reconstruction, or alteration of the size of any structure.*

Therefore, the proposed project requires a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** The subject property is designated Urban by the State Land Use (SLU) Commission.
2. **General Plan:** The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property for Open and Medium-Density Urban uses.
3. **County Zoning:** The subject property is zoned Hotel-Resort (V-.75) by the County of Hawai'i.
4. **Special Management Area:** The subject property is located in the SMA.

Compliance with Objectives and Policies of Chapter 205A, Hawai'i Revised Statutes (HRS), Regarding the Special Management Area

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- ☒ Development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.
- ☒ The proposed development is consistent with the Hawai'i County General Plan and the Zoning Code.
- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, HRS, to:
 - ☒ Provide coastal recreational opportunities accessible to the public.
 - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
 - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
 - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
 - ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.
 - ☒ Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.
 - ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

- ☒ Stimulate public awareness, education, and participation in coastal management.
- ☒ Protect beaches for public use and recreation.
- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
 - ☒ Marine Resources
- ☒ The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

As discussed above, the proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.

The proposed development is accessory to the existing use and is consistent with the Hawai'i County General Plan. The Zoning Code allows multi-family dwellings in the Hotel-Resort zoning districts.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated project cost of approximately \$90,000 is not in excess of \$125,000.

The Department of Public Works – Engineering Division submitted the following comments, dated November 24, 2004, regarding the subject SMAA.

"We have reviewed the subject application for compliance with Chapter 27, Flood Control, forwarded by your memo dated November 17, 2004 and have no objections to the request.

Questions may be referred to Kelly Gomes of our Engineering Division at ext. 8327."

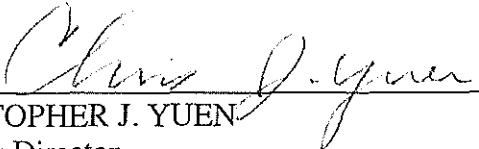
Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 175** is hereby approved to allow for the proposed construction of a seacliff retention system, subject to the applicant's compliance with the conditions of approval as specified below.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 175** 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 comply with all applicable requirements of all State and County of Hawai'i and Federal departments and agencies.
3. Prior to receiving Plan Approval from the Planning Department, the applicant shall contact the Army Corps of Engineers and secure any federal license or permit that may be required for the proposed project or written confirmation that no Federal license or permit is required.
4. Prior to receiving Plan Approval from the Planning Department, the applicant shall secure a National Pollutant Discharge Elimination System (NPDES) permit as may be required in connection with any federal license or permit or the Clean Water Branch of the State Department of Health. See the attached DOH memorandum dated December 3, 2004.
5. Plan Approval for the proposed project shall be secured from the Planning Director pursuant to Chapter 25 of the Zoning Code.
6. Construction of the proposed seacliff retention system shall be completed within one (1) year from the date of this permit.
7. An extension of time for the performance of the conditions contained herein 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 of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
8. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

APPROVED:



CHRISTOPHER J. YUEN
Planning Director

December 14, 2004

Date

LINDA LINGLE
GOVERNOR



CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

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
PLANNING DEPARTMENT
COUNTY OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: December 3, 2004

TO: Christopher J. Yuen
Planning Director, County of Hawaii

FROM: Aaron A. Ueno 
District Environmental Health Program Chief

SUBJECT: Special Management Area Assessment (SMAA) Application No. 04-104
Applicant: Bayshore Towers, et al.
Owners: Bayshore Towers, et. al.
Project: Construction of Seacliff Retention System
Tax Map Key: 2-6-001:015

The Army Corps of Engineers should be contacted at (808) 438-9258 to identify whether a Federal license or permit (including a Department of Army permit) is required for this project. Pursuant to Section 401(a)(1) of the Federal Water Pollution Act (commonly known as the "Clean Water Act"), a Section 401 Water Quality Certification is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters...."

A National Pollutant Discharge Elimination System (NPDES) general permit coverage is required for the following activities:

- a. Storm water associated with industrial activities, as define in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi);
- b. Construction activities, including clearing, grading, and excavations, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different

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Christopher J. Yuen
Page 2
December 3, 2004

- schedules under a larger common plan of development or sale. **An NPDES permit is required before the commencement of the construction activities.**
- c. Discharge of treated effluent from leaking underground storage tank remedial activities;
 - d. Discharge of once through cooling water less than one (1) million gallons per day;
 - e. Discharge of hydrotesting water;
 - f. Discharge of construction dewatering effluent;
 - g. Discharge of treated effluent from petroleum bulk stations and terminals;
 - h. Discharge of treated effluent from well drilling activities;
 - i. Discharge of treated effluent from recycled water distribution systems;
 - j. Discharges of storm water from a small municipal separate storm sewer system;
 - and
 - k. Discharge of circulation water from decorative ponds or tanks.

The Clean Water Branch (CWB) requires that a Notice of Intent (NOI) to be covered by a NPDES general permit for any of the above activities be submitted at least 30 days before the commencement of the respective activities. The NOI forms may be picked up at our office or downloaded from our website at <http://www.state.hi.us/doh/eh/cwb/forms/genl-index.html>.

The applicant may be required to apply for an individual NPDES permit if there is any type of activity in which wastewater is discharged from the project into State waters and/or coverage of the discharge(s) under the NPDES general permit(s) is not permissible. An application for the NPDES permit is to be submitted at least 180 days before the commencement of the respective activities. The NPDES application forms may also be picked up at our office or downloaded from website at <http://www.state.hi.us/doh/eh/cwb/forms/indiv-index.html>.

Hawaii Administrative Rules, Section 11-55-38, also requires the owner to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. Please submit a copy of the request for review by SHPD or SHPD's determination letter for the project.

If you have any questions, please contact the CWB at 586-4309.