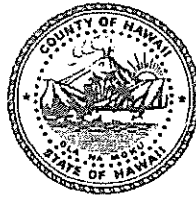


Debbie

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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

November 15, 2006

Ms. Susan Tolley
Mr. Scott Baker
5624 S. Heather Dr.
Tempe AZ 85283

Dear Ms. Tolley and Mr. Baker:

Subject: Special Management Area Use Permit Assessment Application (SAA 06-000198)
Special Management Area Minor Permit No. SMM 06-000037
Applicants: Susan Tolley and Scott Baker
Request: Hand-clearing of Property to Determine the Topography
Tax Map Key: 1-5-58:51, Hawaiian Paradise Park Subdivision, Puna, Hawaii

This is to follow up on our October 23, 2006 letter relating to the above-referenced Special Management Area assessment for the hand-clearing of the property to determine the topography.

The 23,522 square feet parcel is zoned Agricultural (A-1a) by the County and designated Agricultural by the State Land Use Commission. It is designated Open by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map and has frontage along the coastline.

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(ii) relating to the Special Management Area, the "*Grading, removing, dredging, mining, or extraction of any materials*" is defined as "development. Therefore, a Special Management Area Minor Permit is required.

However, Planning Department Rule 11 states that shoreline setback areas are established to regulate the use and activities along the shoreline. All shoreline lots shall have a **minimum** shoreline setback line of forty feet. Staff observation of the subject parcel on October 16, 2006 has confirmed an approximately 10 feet undercutting of the sea cliff.

Ms. Susan Tolley
Mr. Scott Baker
Page 2
November 15, 2006

In view of the foregoing, the Planning Department has determined that a 40-foot shoreline setback line, as measured from the top of the sea cliff, is not a sufficient distance to satisfy the purposes for establishing shoreline setback areas. This includes, but is not limited to, disturbances within the shoreline setback area that may increase erosion of the sea cliff. Therefore, an additional distance of 20 feet from the 40-foot shoreline setback line will be required.

Some of the proposed activity will occur within this 60 feet shoreline setback area. Certain activities, though, may be permitted within the shoreline setback area provided that approval is obtained from our Department.

Planning Department Rule 11-7(a)(4) states that "*A minor structure or activity approved in accordance with section 11-8*" may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department. According to Planning Department Rule 11-3(f) a minor activity is "*an activity that does not alter the existing grade of the shoreline setback area and may include activities such as landscaping and minor clearing (grubbing) of vegetation*". Finally, Planning Department Rule 11-8 further states that "*A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline*".

After review of the proposed activity and Planning Department Rule 11, we have determined that hand-clearing within the 60 feet shoreline setback area is a minor activity and does not require a shoreline setback variance.

For these reasons and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 06-000037 is hereby issued to allow for the hand-clearing of the property to determine topography, subject to the applicant's compliance with the conditions of approval as specified in the permit

Finally, all other applicable Zoning and Building Code requirements must also be satisfied.

Please note, however, that any future activity on or development of the property will require the submittal of another Special Management Area Use Permit Assessment Application for the new use.

Ms. Susan Tolley
Mr. Scott Baker
Page 3
November 15, 2006

Should you have questions, please feel free to contact Esther Imamura of this department at 961-8288, extension 257.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

ETI:cd

\\Coh31\planning\public\wpwin60\CZM\SMM\2006\SMM 06-37L Tolley Baker.rtf

Enclosures - SMM No. 06-000037
Department of Public Works October 26, 2006 Memo

xc w/encls: Ms. Deborah Chang – Long Range Planning
Mr. Norman Hayashi - Planning

2006 OCT 30 PM 12 41

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

PLANNING DEPARTMENT
COUNTY OF HAWAII

DATE: October 26, 2006

Memorandum

TO: Christopher J. Yuen, Planning Director

Enclosure

FROM: *for* *De* Department of Public Works

SUBJECT: SMA USE PERMIT ASSESSMENT APPLICATION (SAA 06-000198)

Applicant: Susan Tolley and Scott Baker

Request: Hand-Clearing of the Property to Determine the Topography

Tax Map Key: 1-5-58: 051

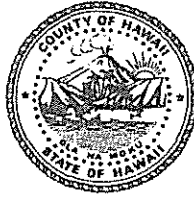
We have reviewed the subject application for compliance with Chapter 27, Flood Control, forwarded by your memo dated October 23, 2006 and have no objections to the request.

The subject parcel is in area that is not mapped by the Federal Emergency Management Agency (FEMA) and is labeled as an area of "minimal tsunami inundation."

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

021047

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

Special Management Area Minor Permit No. 06-000037

Project: Hand-clearing of the Property to Determine the Topography
Applicant: Susan Tolley and Scott Baker
Location: Hawaiian Paradise Park Subdivision, Puna, Hawaii
TMK: 1-5-58:51 Parcel Land Area: 23,522 s.f.

Applicant's Request

1. Project Description:

The applicant proposes to hand-clear the property to remove trees and shrubs. A few of the larger trees will be stripped of some branches. Although some of the activity will occur within the shoreline setback area, it was determined that this hand-clearing is a minor activity and does not require a shoreline setback variance.

2. Purpose of Project:

The purpose is to determine the topography of the subject parcel for the placement of a future single-family dwelling.

3. Project Valuation: \$500

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(ii) relating to the Special Management Area, the "*Grading, removing, dredging, mining, or extraction of any materials*" is defined as "development." Therefore, the proposed project requires a SMA Minor Permit.

State and County Plans

- 1. State Land Use District:** The subject property is designated Agricultural by the State Land Use Commission.
- 2. General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Open.
- 3. County Zoning:** The parcel is zoned Agricultural (A-1a) by the County.

4. **Special Management Area:** The subject property is located in the SMA.
5. **Flood Zone:** By memorandum dated October 26, 2006, the Department of Public Works, Engineering Division states that *"We have reviewed the subject application for compliance with Chapter 27, Flood Control, forwarded by your memo dated October 23, 2006 and have no objections to the request. The subject parcel is in area that is not mapped by the Federal Emergency Management Agency (FEMA) and is labeled as an area of "minimal tsunami inundation".*

<p style="text-align: center;">Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</p>

The project site is a shoreline property. Due to an approximately 10 feet undercutting of the sea cliff, a 60 feet shoreline setback will be required.

There are existing fishing and opihi picking activities along the coastline in Hawaiian Paradise Park. Shoreline public access for fishermen shall be permitted to allow them to traverse laterally within the setback area along the coastline of the subject property. Therefore, the proposed gubbing activity will not affect the shoreline recreational resources available to the public nor impact the coastal environment.

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 Hawaii 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, 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. Lateral access along the shoreline will be available to the public.

The proposed development is consistent with the Hawaii County General Plan and Zoning Code.

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

The estimated project cost of approximately \$500 is not in excess of \$125,000.

The Department of Public Works – Engineering Division has reviewed the proposed project for compliance with Chapter 27, Flood Control, of the Hawaii County Code and has no objections to the request.

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 06-000037** is hereby approved to allow for the hand-clearing of the

properties to determine the topography. This approval is 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. 06-00037** 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 Federal, State and County of Hawaii departments and agencies.
3. The applicant shall complete hand-clearing of the property within one (1) year from the date of approval of this permit.
4. A construction barrier, meeting with the approval of the Planning Director, shall be erected along the entire length of the 60-foot shoreline setback line prior to the commencement of hand-clearing. No mechanized equipment such as the chipper is allowed in the shoreline setback area without securing a prior written determination of minor structure or activity pursuant to Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.
5. Hand-removal of the trees and shrubs within the 60 feet shoreline setback area shall not impact the ocean waters.
6. The area makai of the 60-foot shoreline setback line shall be kept clear of any rubbish or debris at all times. All waste material generated will be composted outside of the 60-foot shoreline setback area or be properly disposed of at an approved waste disposal site immediately upon completion of the hand-clearing of the property.
7. Neither the landowner nor any agent of the landowner or its successors shall, at any time, impede or otherwise restrict lateral public shoreline access along the shoreline makai of the 60-foot shoreline setback line.
8. Future development of the lot is subject to review against the SMA guidelines as such plans are implemented.
9. The Planning Director shall initiate procedures to revoke this determination should any of the conditions not be met or substantially complied with in a timely fashion.

APPROVED:


CHRISTOPHER J. YUEN
Planning Director


Date