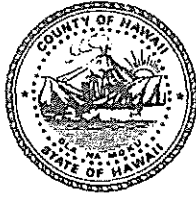


Harry Kim
Mayor



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 8, 2006

Ms. Sandra Pechter Song, Esq.
101 Aupuni Street, Suite 238
Hilo, Hawaii 96720

Dear Ms. Song:

**Special Management Area Use Permit Assessment Application No. 06-000206
(SAA 06-206)**

Special Management Area Minor Permit No. 06-000040 (SMM 06-40)

**Determination of Minor Structure or Minor Activity in the Shoreline Setback
Area**

Applicant: Richard M. Applebaum

Land Owner: Richard M. Applebaum

**Project: Completion of corrective actions cited in Notice of Violation
and Order (ZCW 06-049W) and complete resurfacing of
driveway/parking area**

TMK: (3) 7-8-014:077 Kahalu`u Beach Lots, Kahalu`u, North Kona, Hawaii

By this letter we acknowledge receipt of the subject Special Management Area Use Permit Assessment application (SAA 06-206) and issue our determination that Special Management Area Minor (SMM) Permit No. 06-40 (SMM 06-40), which is transmitted by this letter, is required for the proposed project.

The proposed activities and operations include the demolition and removal of rocks walls and irrigation system components from the shoreline setback area that were constructed without proper permits and approvals as cited in Notice of Violation and Order referenced above.

Rule 11 of the Planning Department Rules of Practice and Procedure (PD Rules) deals with structures and activities within the shoreline setback area. Pursuant to §11-7(a)(4), a minor structure or activity approved in accordance with §11-8 may be permitted within the shoreline setback area. The Planning Department may determine that a proposed structure or activity is a minor structure or activity if 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.

Ms. Sandra Pechter Song, Esq.

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November 8, 2006

Since the proposed activities and operations within the shoreline setback area will be conducted to restore the shoreline area to its prior condition, we have determined that proposed activities and operations within the shoreline setback area, as described above, are minor activities as provided for under Rule 11, PD Rules and are permitted provided the applicant remains in compliance with the conditions of SMM 06-40.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

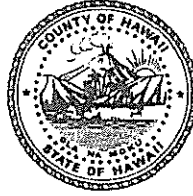
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Encl: SMM 06-40

xc w/encl: Long Range Planning - Ms. Deborah Chang
Planning Commission

Harry Kim
Mayor



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Special Management Area Minor Permit No. 06-000040

Project: Completion of corrective actions cited in Notice of Violation and Order (ZCW 06-049W) and complete resurfacing of driveway/parking area
Applicant: Richard M. Applebaum
Land Owner: Richard M. Applebaum
Location: Kahalu'u Beach Lots, Kahalu'u, North Kona, Hawai'i
TMK: (3) 7-8-014:077

Applicant's Request

To remove the newly constructed rock walls, partially constructed wheelchair ramp, backfill and all exposed sprinkler heads and irrigation piping as specified in ZCW 06-049W, Special Management Area Violation (SMA/V 06-03W, and Shoreline Setback Violation (SSV 06-01W). Also proposed is the completion of the resurfacing of the parking area between the existing dwelling and Ali'i Drive.

1. Project Description:

Elements of the overall project being proposed that will be sited within the SMA shall be the subject of this permit and include the following:

- a) All rock walls constructed on the subject parcel that were constructed on the subject property after the date (October 14, 2004) of our letter accepting the terms and conditions offered by the applicant to settle the Notice of Violation and Order (SMA 04-10W) dated June 24, 2004.
- b) Remove the partially constructed wheelchair ramp connecting the driveway/parking area with the south yard area of the subject property.
- c) Remove all fill material placed on the subject property after the date (October 14, 2004) of our letter accepting the terms and conditions offered by the applicant to settle the Notice of Violation and Order (SMA 04-10W) dated June 24, 2004.
- d) Remove all irrigation sprinkler heads and piping within the 20-foot shoreline setback area.
- e) Remove all construction material, tools and equipment from the subject property.

- f) Complete the driveway/parking area resurfacing operations between the existing dwelling and Ali'i Drive.

2. Purpose of Project:

The purpose of the project is to comply with the corrective actions specified in the above referenced Notice of Violation and Order and to improve the safety of pedestrians and vehicles in the area between the existing dwelling and Ali'i Drive.

3. Project Valuation: \$5,000.00

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(i) and (ii), relating to the Special Management Area, "development" includes the placement of any solid material or the grading, removing, dredging, mining, or extraction of any materials. This includes the placement of fill material or planting of vegetation and the removal of vegetation, soil or rock within the SMA.

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 Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property for open space uses.
3. **County Zoning:** The subject property is zoned Single-Family Residential (RS-7.5) by the County of Hawaii.
4. **Special Management Area:** The subject property is located in the SMA.

Compliance with Objectives and Policies of Chapter 205A, Hawaii 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 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 tsunamis, 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 consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated total expenditures for both phases of the proposed project are \$5,000.00.

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 submitted the following comments, dated March 22, 2006, regarding the subject SMAA.

"We have reviewed the subject application and our comments are as follows:

Coastal Flood Zones "AE and VE" affect the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 16, 1988. Any new construction or substantial improvements will be subject to the requirements of Chapter 27 – Flood Control, of the Hawaii County Code. The base flood elevation is 12 feet for both the AE and VE zones. We have no comments on the proposed demolition.

All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code. Driveways shall conform to County standards details R-37 and R-38.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division at 327-3530."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 06-000040** is hereby approved to allow for the elements of the proposed project as described in Item #1, Project Description of this permit.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 06-000040** 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 Hawaii and Federal departments and agencies.
3. The applicant shall consult with the State Department of Health, Clean Water Branch regarding any regulations and/or permits applicable to the proposed activities prior to commencing any of the proposed activities or operations.

4. All materials resulting from demolition activities and/or fill material being removed shall not be placed or stored within the 20-foot shoreline setback area.
5. Best Management Practices shall be employed to prevent the introduction from the proposed activities and operations of any pollutants into the near shore waters.
6. The applicant shall complete the proposed activities and operations within three (3) months from the date of approval of this permit. The applicant shall immediately notify the Planning Department, in writing, upon the completion of the activities and operations.
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 the Planning Director shall initiate procedures to revoke the permit.

APPROVED:



CHRISTOPHER J. YUEN
Planning Director

NOV 09 2006

Date