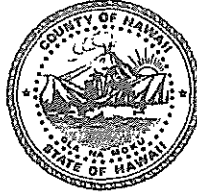


Debbie

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

Mr. Robert D. Triantos, Esq.
Carlsmith Ball LLP
P.O. Box 1720
Kailua-Kona HI 96745-1720

Dear Mr. Triantos:

Subject: Special Management Area Use Permit Assessment Application (SAA 06-000168)
Special Management Area Minor Permit No. SMM 06-000041

Applicant: HFI, Inc.

Request: 1) Demolish Two Sections of the Existing Seawall; and

2) Remove Loose Lava Rocks/Mortar Composite and Cinder Fill

TMK: 6-8-24:31-34, The Cape Subdivision, Mauna Lani, South Kohala, Hawaii

This is to follow up on our September 25, 2006 letter relating to the above-referenced Special Management Area assessment to demolish two sections of the existing seawall, and remove loose lava rocks/mortar composite and cinder fill on Parcels 33 and 34.

Mechanized equipment will be mobilized from Parcels 31 and 32. Documentation of authorization from Toyota Motor Sales, USA Inc. was received on November 14, 2006.

The subject properties are zoned Multiple-Family Residential (RM-3) and Open (O) by the County and designated Urban by the State Land Use Commission.

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(10)(A)(v) relating to Special Management Area, the proposal to demolish two sections of the existing seawall, and remove loose lava rocks/mortar composite and cinder fill on Parcels 33 and 34 with mechanized equipment stationed on Parcels 31 and 32 does not qualify as exempt from the definition of "development". Therefore, a Special Management Area Minor Permit is required.

Mr. Robert D. Triantos, Esq.
Carlsmith Ball LLP
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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.

Mechanized equipment will remain outside of the forty feet shoreline setback area on Parcels 31 and 32. The proposed activity on Parcels 33 and 34 will occur within the forty 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)(6) states that "*Structures which were completed by or activities which commenced prior to June 22, 1970*" may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department. Further, Planning Department Rule 11-7(b) states that "*Structures or activities that qualify under section 11-7(a)(6) through (10) may be repaired in conformance with plans approved by the Planning Department, but shall not be enlarged without a shoreline setback variance*". Finally, Planning Department rule 11-7(c) states that "*Structures or activities that qualify under section 11-7(a)(6) through (10) may be routinely maintained*".

The department has previously concurred that the seawall was constructed prior to June 22, 1970. After review of the proposed activity and Planning Department Rule 11, we have determined that the demolition of two sections of the existing seawall and the removal of loose lava rocks/mortar composite and cinder fill within the 40 feet shoreline setback area is a minor activity and does not require a shoreline setback variance. Planning Department written clearance, however, will be required for routine maintenance of the seawalls.

For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 06-000041 is hereby issued to demolish two sections of the existing seawall and to remove loose lava rocks/mortar composite and cinder fill.

Mr. Robert D. Triantos, Esq.
Carlsmith Ball LLP
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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

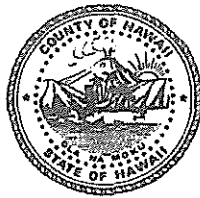
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Enclosures: SMM No. 06-000041
Department of Public Works October 4, 2006 Memo

xc w/Encls: Ms. Deborah Chang - Long Range Planning
Mr. Norman Hayashi - Planning
Planning Department - Kona

Harry Kim
Mayor



Christopher J. Yuen
Director

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PLANNING DEPARTMENT

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Special Management Area Minor Permit No. 06-000041

Project: 1) Demolish Two Sections of the Existing Seawall; and
2) Remove Loose Lava Rocks/Mortar Composite and Cinder Fill
Applicant: HFI, Inc.
Land Owner: HFI, Inc. – Parcel 33 and 34
Toyota Motor Sales, USA Inc. – Parcel 31 and 32
Location: The Cape Subdivision, Mauna Lani, South Kohala, Hawaii
TMK: 6-8-24:31-34
Land Area: Parcel 31 – 1.080 ac; Parcel 32 – 1.3283 ac.
Parcel 33 – 1.841 ac.; Parcel 34 – 0.9587 ac.

Applicant's Request

1. Project Description:

The applicant proposes to demolish two sections of the existing seawall and remove loose lava rocks/mortar composite and cinder fill. The work will be completed within 7 to 10 days. A dump truck, backhoe bucket and backhoe hammer will be utilized. The mechanized equipment will be mobilized from Parcels 31 and 32 but remain outside of the 40' shoreline setback area. Written consent was received from Toyota Motor Sales, USA Inc.

2. Purpose of Project:

The existing seawall has been breached in two areas due to high wave action. The existing fill material will be pulled back from the seawall prior to demolition of the remaining portion of the seawall going south. The remaining portion of the seawall closest to Makaiwa Bay will be retained.

3. Project Valuation: \$82,458.45

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(v) relating to the Special Management Area, the demolition of two sections of the existing seawall and removal of loose lava rocks/mortar composite and

cinder is not exempt from the definition of "development." Therefore, the proposed project requires a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** The subject properties are designated Urban by the State Land Use Commission.
2. **General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the properties as Resort Node.
3. **County Zoning:** The subject properties are zoned Multiple-Family Residential (RM-3) and Open (O).
4. **Special Management Area:** The subject properties are located in the SMA.
5. **Flood Zone:** The subject parcels are in an area designated as Flood Zone VE on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). According to the October 4, 2006 Department of Public Works, Engineering Division memorandum, "*We regard the subject project, demolition of the existing nonconforming seawall, as not regulated under Chapter 27 per Section 27-5(b)(6)*".

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

The project site has frontage along the shoreline. Mechanized equipment will be utilized. To ensure public health and safety, the lateral shoreline public access easement will be closed for only approximately 7 to 10 days to allow for the use of the mechanized equipment. Therefore, the proposed activity will only temporarily affect the recreational resources available to the public.

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. Since the activity will require the use of mechanized equipment, the public access easement will be closed, but only temporarily.

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 \$82,458.45 is not in excess of \$125,000.

Upon review of the subject application, the Department of Public Works, Engineering Division has no objections to the request.

The Planning Director has approved **SMA Minor Permit No. 06-000041**, 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 State, County and Federal agency requirements.
3. Signage to inform the public of the dates for the temporary closure of the public access walkway shall be erected one week prior to the commencement of the proposed activity.
4. The applicant shall demolish two sections of the existing seawall and remove loose lava rocks/mortar composite and cinder fill within one (1) year from the date of approval of this permit. The applicant shall immediately notify the Planning Department, in writing, upon the completion of the demolition and removal activities.
5. All debris resulting from the demolition of two sections of the existing seawall and the removal of loose lava rock/mortar composite and cinder fill shall be disposed of in an appropriate landfill and not impact the ocean waters.
6. A backhoe bucket will be allowed to be in the area makai of the fence and mauka of the seawall. If the debris is too large, a backhoe hammer will also be permitted within this area. No other mechanized equipment will be allowed in this area.
7. The demolition and removal activities shall not exceed 10 days to minimize interference with public access to and along the shoreline.

8. 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)

APPROVED:



CHRISTOPHER J. YUEN
Planning Director



Date

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PLANNING DEPARTMENT
COUNTY OF HAWAII

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: October 4, 2006

Memorandum

TO : Christopher J. Yuen, Planning Director
Planning Department

FROM : Galen M. Kuba, Division Chief 
Engineering Division

SUBJECT : Special Management Area Use Permit
Assessment Application (SAA 06-000168)
Applicant: HFI, Inc.
Location: Thr Cape Subdivision, Mauna Lani, S. Kohala, HI
TMK: 3 / 6-8-024:031-034

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

Flood Zone "VE", affects the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 16, 1988. Any new construction or substantial improvements within the VE Zone are subject to the requirements of Chapter 27 - Flood Control, of the Hawaii County Code.

We regard the subject project, demolition of the existing nonconforming seawall, as not regulated under Chapter 27 per Section 27-5(b)(6).

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

KE

copy: ENG-HILO/KONA
PLNG-Kona