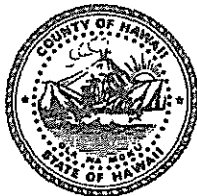


Esther

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 96720-4224

(808) 961-8288 • FAX (808) 961-8742

August 23, 2007

Ms. Sandra Pechter Song, Esq.  
10 Kamehameha Avenue  
Hilo HI 96720

Dear Ms. Song:

**Subject: Special Management Area Use Permit Assessment Application (SAA 07-000260)**

**Special Management Area Minor Permit No. 07-000061**

**Applicant: Richard M. Applebaum**

**Land Owner: Richard M. Applebaum**

**Request: Construct Retaining and Boundary Walls, Stairways, Wheelchair  
Ramp and Grassed Lawn**

**Tax Map Key: 7-8-14:77, Kahaluu, North Kona, Hawaii**

This is to follow up on our June 12, 2007 letter relating to the above-referenced Special Management Area assessment to construct retaining and boundary walls, stairways, wheelchair ramp and grassed lawn on the subject parcel.

The subject property is designated Urban by the State Land Use Commission. It is also designated Open by the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map and zoned Single-Family Residential (RS-15) by the County.

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(10)(A)(i) and (v) relating to Special Management Area, the proposed project does not qualify as exempt from the definition of "development". Therefore, a Special Management Area Minor Permit is required.

For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 07-000061 is hereby issued to construct retaining and boundary walls, stairways, wheelchair ramp and grassed lawn on the parcel, subject to compliance with the conditions of approval as specified in the permit.

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

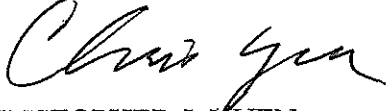
Ms. Sandra Pechter Song, Esq.

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August 23, 2007

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

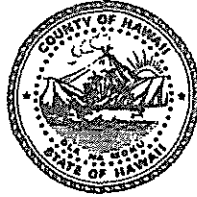
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Enclosure - SMM No. 07-000061

xc w/encls: Ms. Esther Imamura, Long Range Planning  
Mr. Norman Hayashi, Planning Commission  
Planning Department – Kona

xc ltr only: Ms. Laura H. Thielen, Director – Office of Planning, DBED&T  
(SMM 07-000061 will be emailed with the semi-monthly report)

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

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**Special Management Area Minor Permit No. 07-000061**

**Project:** Construct Retaining and Boundary Walls, Stairways, Wheelchair Ramp and Grassed Lawn  
**Land Owner:** Richard M. Applebaum  
**Applicant:** Richard M. Applebaum  
**Location:** Kahaluu, North Kona, Hawaii  
**TMK:** 7-8-14:77 **Land Area:** 19,715 square feet

**Applicant's Request**

**1. Project Description:**

As denoted on the "Exhibit Map Showing Lot 20-A of the Kahaluu Beach Lots" dated May 7, 2007, the applicant proposes the following improvements in the southern portion of the parcel:

- a. A 3.0'-5.0' high concrete rock retaining wall located mauka of the 20-foot shoreline setback line as certified by the Chairperson of the State Board of Land and Natural Resources on June 1, 2006.
- b. Retaining the as-built 5.5' – 6.0' high boundary concrete rock wall adjacent to and parallel with the property line fronting Ali'i Drive.
- c. The area between the makai retaining wall and the boundary wall fronting Ali'i Drive to be landscaped by backfilling with rock, gravel and soil to establish a grassy lawn area.
- d. A concrete wheelchair ramp leading from the south side of the dwelling to the newly installed lawn area, terminating at an approximately 10-foot square existing stone landing at the base of the ramp.
- e. A shallow crescent shaped area along the mid-portion of the retaining wall will be constructed into a concrete stairway leading from the lawn area to the natural ground makai of the retaining wall and outside of the 20-foot shoreline setback line.

- f. A second set of concrete steps at the northern end and mauka of the retaining wall, mauka of the 20-foot shoreline setback line.

**2. Purpose of Project:**

The applicant proposes to re-establish a grassy yard area which was destroyed by storm waves of Hurricane Iniki in 1992, provide handicapped wheelchair access to the yard area from the dwelling, and provide stairways leading from the yard to the makai shoreline area.

**3. Project Valuation:** \$38,000.

**4. Wave Study for the Richard Applebaum Property:** A Revised Wave Study by Witcher Engineering, LLP dated June 26, 2007 was submitted to the Department of Public Works, Engineering.

**5. 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, demolition, or alteration of the size of any structure".*

Therefore, the proposed project requires a SMA Minor Permit.

<b>State and County Plans</b>
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- 1. State Land Use District:** The subject property is designated Urban by the State Land Use Commission.
- 2. General Plan:** The parcel is designated Open by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
- 3. County Zoning:** The subject property is zoned Single-Family Residential (RS-7.5) by the County.
- 4. Special Management Area (SMA):** The subject property is located in the SMA and has frontage along the shoreline.
- 5. Special Management Area (SMA) and Shoreline Setback Violation:** Notice of Violation and Order (ZCV 06-049W), SMA Violation (SMA/V 06-03W) and Shoreline Setback Violation (SSV 06-01W) were issued by letter dated June 28, 2006 for the construction of rock walls and placement of fill within the SMA without proper approvals.
- 6. Special Management Area Minor Permit (SMM):** SMM No. 06-000040 was issued on November 8, 2006 for the completion of corrective actions cited in Notice of Violation and Order (ZCV 06-049W) and complete resurfacing of driveway/parking area.
- 7. Flood Zone:** The subject parcel is located within Flood Zones "AE" and "VE".

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

A walkway, with stairs, located on the northern boundary of the property, provides public pedestrian access from Ali'i Drive to the shoreline. Therefore, the proposed activity will not 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.

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 \$38,000 is not in excess of \$125,000.

The enclosed Department of Public Works (DPW), Engineering Division memorandum dated April 16, 2007 stated the following:

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

*We have determined that the subject property is located within Flood Zones "AE" and "VE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). All of the proposed improvements, including retained fill occur within the AE Flood Zone. Any new construction or substantial improvements within the either zone are subject to the requirements of Chapter 27- Flood Control, of the Hawaii County Code.*

*According to Section 27-18, filling in the flood zone AE is prohibited "unless certified by a professional civil engineer registered in the State of Hawaii, with*

*supporting data, that the encroachment will not cause any increase in the base flood elevation during the occurrence of the base flood discharge”.*

*A Revised Wave Study by Witcher Engineering, LLP dated June 26, 2007 contains the necessary certification to comply with Section 27-18. However, the improvements illustrated in Figure 3 of that study are not the same as in Attachment 5 of the application. Note the configuraiton of the makai retaining wall. Consistency of the application is recommended to prevent future misunderstandings.*

*The existing drainage pattern for Alii Drive must be maintained. Storm runoff shall not be concentrated or diverted to adjacent properties by the proposed improvements.”*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 07-000061** is hereby approved to construct retaining and boundary walls, stairways, wheelchair ramp and grassed lawn, subject to the applicant's compliance with the conditions of approval as specified below.

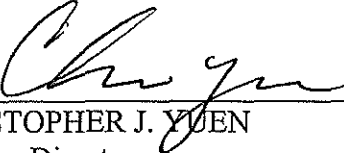
#### **Conditions of Approval**

The Planning Director has approved **SMA Minor Permit No. 07-000061**, 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 the State Department of Health and the County Department of Public Works and applicable requirements of other affected agencies.
3. A construction barrier shall be erected along the 20-foot shoreline setback line to prevent construction debris and runoff sedimentation from impacting the ocean waters. The construction barrier shall remain in place until all construction and landscaping activities have been completed.
4. Storm runoff shall not be concentrated or diverted to adjacent properties by the proposed improvements.
5. Continuous public lateral pedestrian shoreline access shall be maintained in the 20-foot shoreline setback area at all times.
6. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigative measures are taken for the discovery; with written guidance form the State Historic Preservation Division of the Department of Land and Natural Resources.

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

AUG 24 2007

Date