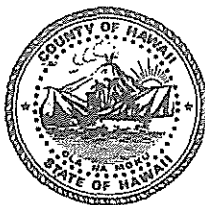


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

March 15, 2010

Mr. Walter Koenig
76-6356 Leone Way
Kailua- Kona, HI 96740

Dear Mr. Koenig:

**SUBJECT: Special Management Area Use Permit Assessment Application
(SAA 10-000539)
Special Management Area Minor Permit No. 10-000144
Applicant(s): Walter Nikolaus Koenig
Request: After-the-Fact Construction of a Tractor Shed, Storage
Yurt, and Fencing
Tax Map Key: (3) 4-5-002:080, Papaanui and Haina, Hamakua,
Hawai'i**

This is in response to your Special Management Area Use Permit Assessment Application received on February 10, 2010 for the after-the-fact construction of a tractor shed, storage yurt, and fencing on the subject parcel. Also acknowledged is the recent site inspection, on March 2, 2010, by Planning Department staff at the subject property.

Please note that although the storage yurt was deleted from the resubmitted application, it is still located on the property and requires approval from this department for the after-the-fact construction in the Special Management Area (SMA). We understand that you intend to either relocate the yurt to a better suited location within the subject property or to a site off of the property. The yurt, at its current location, was assessed and has been included in this determination. Please consult with this office prior to any demolition, relocation or alterations to the existing yurt.

Mr. Walter Koenig

Page 2

March 15, 2010

The subject property consists of 15.591 acres. It is zoned Agricultural (A-40a) by the County and is designated Agricultural and Conservation by the State Land Use Commission. The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Important Agricultural Land and Open. According to Hawaii Revised Statutes (HRS) Chapter 205A-22 and Planning Commission (PC) Rule 9-4(10)A(v), "development" includes *Construction, reconstruction, demolition, or alteration of the size of any structure*. Therefore, the construction of the tractor shed, storage yurt and fencing are considered "development" and requires either a Special Management Area Minor Permit or a Special Management Area (Major) Use Permit.

For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No.10-000144 is hereby issued to allow for the after-the-fact construction of a tractor shed, storage yurt and fencing on the subject parcel. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

If you have questions, please feel free to contact Bethany Morrison of this department at 961-8138.

Sincerely,



BJ LEITHEAD TODD

Planning Director

BJM:cs

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Enclosure - SMM No. 10-000144
Department of Public Works Memorandum dated March 5, 2010

cc w/Encls: Long Range Planning Division
Planning Division

Mr. Walter Koenig

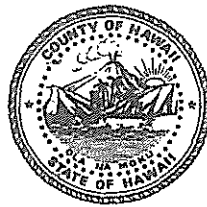
Page 3

March 15, 2010

cc ltr only: Mr. Abbey S. Mayer, Interim Director
Office of Planning, DBEDT
State of Hawaii Department of Business, Economic
Development & Tourism
P.O. Box 2359
Honolulu, HI 96804-2359

Department of Public Works
Building Division
101 Pauahi Street Suite 7
Hilo, HI 96720

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Special Management Area Minor Permit No. 10-000144

Project: After-the-Fact Construction of a Tractor Shed, Storage Yurt, and Fencing
Applicant: Walter Nikolaus Koenig
Location: Papaanui and Haina, Hamakua, Hawai'i
TMK: (3) 4-5-002:080 15.591 acres

Applicant's Request

- 1. Project Description:** The landowner has constructed a tractor shed, storage yurt, and fencing on the subject parcel. The purpose of the yurt and small tractor shed is for agricultural uses with no power or plumbing. The cattle fence was constructed by a local rancher whose cattle range the surrounding area.
- 2. Purpose of Project:** The structures were erected to make agriculture more sustainable on the property after having suffered damage from cows, drought and theft. The intent of the buildings is to assist in a small scale organic agricultural effort within the fenced area.
- 3. Project Valuation:** \$12,500
- 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 construction, reconstruction, or alteration of the size of any structure is defined as "development." Therefore, the proposed tractor shed, storage yurt, and fencing requires a SMA Minor Permit.

State and County Plans

- 1. State Land Use District:** The subject property is designated Agricultural and Conservation by the State Land Use Commission.

2. **General Plan:** The subject property is designated Important Agricultural Land and Open by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The subject property is zoned Agricultural (A-40a) by the County.
4. **Special Management Area:** The majority of the subject property is located in the SMA, and it does have frontage along the coastline.
5. **Flood Zone:** According to the Department of Public Works, a portion of the subject property (along the coast) is in an area designated as Flood Zone VE. However, according to the application, the subject structures are in an area designated as Zone X.

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

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, 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 subject property has frontage along the coastline, though it is a steep cliff bluff. Also the project area is more than 200' from the shoreline. Therefore, the proposed activity will not affect public access to the shoreline or public use of the shoreline area.

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 construction cost of \$12,500 is not in excess of \$125,000.

By enclosed memorandum dated March 5, 2010, the Department of Public Works, Engineering Division stated that:

"We reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated March 1, 2010 and have no objections to the request.

A portion of the subject property (along the coast) is 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 application, the subject structure is at an estimated elevation of 140 feet and is therefore in an area designated as Zone X- outside the 500-year floodplain.

Questions may be referred to Kelly Gomes at ext. 8327."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 10-000144** is hereby approved to allow the after-the-fact construction of a tractor shed, storage yurt, and fencing, 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. 10-000144** 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 secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. No land alteration, grubbing, landscaping or construction activities, including but not limited to, the stockpiling of debris, construction materials or equipment, shall occur within the State Land Use Conservation district without securing a prior approval of a Conservation District Use Application (CDUA) or other written approval as deemed necessary by the Board of Land and Natural Resources.
4. If the yurt remains in its current location, the land owners shall secure approval of a Conservation District Use Application (CDUA) or other written approval as deemed necessary by the Board of Land and Natural Resources.
5. If the yurt is to be relocated outside of the State Land Use Conservation District, please consult this office prior to any demolition, relocation or alterations to the existing yurt.
6. The Building Permit(s) for the tractor shed and yurt shall be issued within two (2) years from the date of approval of this permit.
7. The Shoreline Setback Line shall be established 100 feet mauka (inland) from the top of the sea cliff. No land altering or construction activities shall be permitted within the 100' shoreline setback area without the prior written

Determination of Minor Structure or Minor Activity by the Planning Director or the approval of a Shoreline Setback Variance by the Planning Commission.

8. Lateral public access to and along the shoreline shall not be inhibited within forty feet of the top of the cliff, or further mauka (inland) as may be necessary for the safety of the public traversing the area.
9. 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 from the State Historic Preservation Division of the Department of Land and Natural Resources.
10. 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).
11. 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:


BJ LEITHEAD TODD


Date