

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

December 22, 2010

Mr. Dave Warren
General Delivery
Pāhoa, HI 96678

Dear Mr. Warren:

**Subject: Special Management Area Use Permit Assessment Application
(SAA 10-000613)
Special Management Area Minor Permit No. 10-000168
Applicant: Dave Warren
Request: 1) After-the-Fact Grubbing and Grading, and
2) Landscaping and Routine Maintenance of the Property
Tax Map Key: 1-5-9:56, Puna, Hawaii**

This is to follow up on our November 29, 2010 letter relating to the above-referenced Special Management Area assessment for the after-the fact grubbing and grading as well as for landscaping and routine maintenance of the subject parcel.

This 5 acre parcel is designated Conservation by the State Land Use Commission. For these Conservation areas, there is no County zoning per se. It is also in the Special Management Area and has frontage along the coastline.

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(e)(1)(B) and (A) relating to Special Management Area, the after-the fact grubbing and grading as well as for landscaping and routine maintenance is considered "*Grading, removing, dredging, mining, or extraction of any materials*" and "*Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste*" respectively, and both defined as "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. 10-000168 is hereby issued to allow for the after-the fact grubbing and grading as well as for landscaping and routine maintenance, subject to the applicant's compliance with the conditions of approval as required by the permit.

Mr. Dave Warren
December 22, 2010
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Finally, all other applicable Zoning and Building Code requirements must also be satisfied.

Should you have questions, please feel free to contact Esther Imamura at 961-8139.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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Enclosures - SMM No. 10-000168
Department of Public Works December 7, 2010 Memo

cc: w/Encls.: Long Range Planning
Planning
Mr. Abbey S. Mayer, Acting Director – Office of Planning, DBED&T
Mr. Samuel Lemmo, Administrator, OCCL



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Special Management Area Minor Permit No. 10-000168

Project: 1) After-the-Fact Grubbing and Grading, and
2) Landscaping and Routine Maintenance of the Property
Applicant: Dave Warren
Land Owner: Dave Warren
Tax Map Key: 1-5-9:56 **Land Area:** 5 acres

Applicant's Request

1. Project Description:

This project is for the after-the-fact grubbing and grading as well as for landscaping and routine maintenance of the subject property.

2. Purpose of Project:

The total area cleared was approximately half an acre. Primarily, it consisted of overgrown roadways and a previously cleared area. An additional area for a possible future dwelling was also cleared.

The landscaping and routine maintenance of the property would include clearing for the planting of fruit trees, flowers and other shrubs and edible plants. According to our file, portions of this parcel was previously cleared and maintained. The overgrown roadways and previously cleared areas were grubbed and graded by the new owner.

3. Project Valuation: \$1,600.

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(e)(1)(B) and (A) relating to the Special Management Area, the "Grading, removing, dredging, mining, or extraction of any materials" and "Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste", respectively, 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 Conservation by the State Land Use Commission.
2. **General Plan:** The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Open.
3. **Puna Community Development Plan (CDP):** The proposed activity is not contrary to the goals, objectives and policies of the CDP.
4. **County Zoning:** For parcels that are designated Conservation by the State Land Use Commission, there is no County zoning per se.
5. **Special Management Area (SMA):** It is in the SMA and has frontage along the coastline. However, the recently cleared areas are over 60 feet from the ocean.
6. **Flood Zone:** Flood Zone "X"

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

The subject parcel has frontage along the coastline. However, the grubbing and grading and proposed landscaping improvements are located over sixty (60) feet mauka of the ocean. Therefore, the proposed activity will not affect public access to the shoreline or negatively affect shoreline 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 Hawai'i 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.

The proposed development is consistent with the Hawai'i 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 \$1,600 is not in excess of \$125,000.

By enclosed memorandum dated December 7, 2010, the Department of Public Works, Engineering Division had the following comments:

"We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated November 29, 2010 and have no objections to the request.

The subject parcel is in an area that is not mapped by the Federal Emergency Management Agency (FEMA) and is identified as an area of "minimal tsunami inundation". For developmental purposes, we designate such parcels as Zone X – areas determined to be outside the 500-year floodplain."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 10-000168** is hereby approved for the 1) after-the-fact grubbing and grading, and 2) landscaping and routine maintenance of the property, with the conditions of approval as specified below.

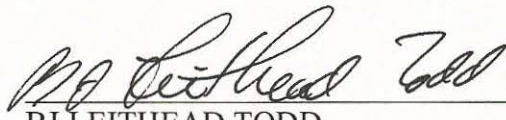
Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 10-000168** 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. As required by Special Management Area Violation (SMA/V 10-132E) letter dated December 6, 2010, pay the civil fine of \$300 by December 30, 2010.
4. A Conservation District Use Permit from the Board of Land and Natural Resources or other written approval from the Department of Land and Natural Resources, Office of Conservation and Coastal Lands must be obtained for the after-the-fact grubbing and grading as well as for landscaping and routine maintenance of the subject property within one (1) year from the date of approval of this permit.
5. 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.

6. Without a current certified shoreline survey, any proposed landscaping improvements within sixty (60) feet of the ocean will require the submittal of another Special Management Area Use Permit Assessment Application.
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:



BJ LEITHEAD TODD
Planning Director

DEC 22 2010

Date

PLANNING DEPARTMENT
COUNTY OF HAWAII

2010 DEC -7 PM 2: 51

DEPARTMENT OF PUBLIC WORKS

COUNTY OF HAWAII
HILO, HAWAII

DATE: December 7, 2010

Memorandum

TO: BJ Leithead Todd, Planning Director

FROM: *fu*  Department of Public Works

SUBJECT: **SMA USE PERMIT ASSESSMENT APPLICATION (SAA 10-000613)**

Applicant: Dave Warren

Land Owner: Dave Warren

Request: 1) After-the-Fact Grubbing and Grading, and
2) Landscaping and Routine Maintenance on the Property

Tax Map Key: 1-5-09: 056

We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated November 29, 2010 and have no objections to the request.

The subject parcel is in an area that is not mapped by the Federal Emergency Management Agency (FEMA) and is identified as an area of "minimal tsunami inundation." For developmental purposes, we designate such parcels as Zone X - areas determined to be outside the 500-year floodplain.

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

