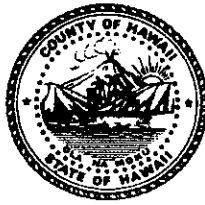


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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Fax (808) 961-8742

October 18, 2011

Mr. Stephen J Herbert P.E.
P.O. Box 4481
Kailua-Kona, HI 96745

Dear Mr. Herbert:

**SUBJECT: Special Management Area Use Permit Assessment Application
(SAA-11-000704)
Special Management Area Minor Use Permit (SMM-11-000195)
Applicant: Stephen J. Herbert
Land Owner(s): Douglas and Julie Miller Family Trust
Request: Remove Existing Wood Fence and Construct a Stone Fence
Tax Map Key: (3) 7-8-014:006; Kahalu'u Beach Lots, North Kona, Hawai'i**

This is in response to your Special Management Area Use Permit Assessment Application received on August 15, 2011. In addition, a time extension and comments and certification related to the Department of Public Works were received on September 23, 2011. Please note that the Floodplain Management Code Certification will need to be directed to the Department of Public Works for their review.

The applicant proposes the removal of the existing wood fence and construction of a 6-foot high stone fence along a portion of the southern property boundary. The new stone fence would be constructed inside of the existing low stone wall which is below the wood fence and will remain in place.

The subject parcel consists of 11,820 square feet and is zoned RS-7.5 (Single-Family Residential). The parcels are located in the State Land Use Urban District and designated as Open by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map. In addition, the subject parcels are located entirely within the Special Management Area (SMA) and has frontage along the shoreline.

Mr. Stephen J Herbert P.E.

October 18, 2011

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Special Management Area Determination:

According to Chapter 205A-22, Hawai'i Revised Statutes, and Planning Commission Rule No. 9-4(e) (1) (E), relating to the Special Management Area, "*Construction, reconstruction, demolition, or alteration of the size of any structure,*" is not exempt from the definition of "development." Therefore, the proposed removal of the existing wood fence and construction of a 6-foot high stone fence is considered "development" and requires a review against the Special Management Area rules and regulations.

Determination of Minor Activity within Shoreline Setback Area:

The removal of the existing wood fence and construction of a 6-foot high stone fence are proposed within a portion of the 40-foot shoreline setback area. The stone fence will be constructed to the same height as the existing wood fence and setback farther within the property, behind the existing low stone wall. However, the proposed stone fence 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. Pursuant to PC Rule 11-8, the stone fence is therefore considered a minor structure and will not require a Shoreline Setback Variance.

Compliance with Environmental Impact Statement Regulations (Chapter 343, HRS):

According to Hawai'i Revised Statutes (HRS) Chapter 343-5, an environmental assessment shall be required for actions that propose any use within a shoreline area. However, Hawai'i Administrative Rules (HAR), Chapter 200, Environmental Impact Statement Rules, provides a list of classes of action that may be exempt from the preparation of an environmental assessment. Among the list of exempt classes of action listed in HAR Chapter 200 is:

- *11-200-8(A)2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;*

The Planning Department consulted with the Department of Public Works (DPW) regarding the Planning Director's "Declaration of Exemption" from the preparation of an EA for the subject project. The Planning Department determines that the proposed action will probably have minimal or no significant effect on the environment and hereby exempts the applicant from the preparation of an EA for the proposed project. No uses, activities, or development, other than those described in the application, shall be exempt from environmental review under Chapter-343.

Mr. Stephen J Herbert P.E.

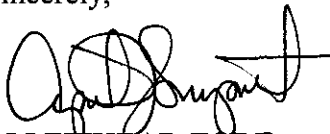
October 18, 2011

Page 3

Based on the above and pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No.11-000195 is hereby issued to allow the removal of the existing wood fence and construction of a 6-foot high stone fence. 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. 11-000195
HRS Chapter 343 Declaration of Exemption
Department of Public Works Memorandum dated September 13, 2011

xc w/encls: Douglas and Julie Miller Family Trust
963 Oxford Street
Berkeley, CA 94707

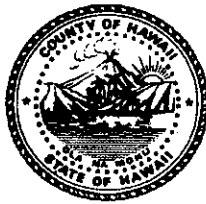
Long Range Planning Division
Planning Division

Department of Public Works, Engineering Division

State of Hawai'i
Department of Health
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

xc ltr only: Mr. Jesse K. Souki, Director
Office of Planning, DBEDT

William P. Kenoi
Mayor



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Special Management Area Minor Permit No. 11-000195

Project: Remove Existing Wood Fence and Construct a Stone Fence
Applicant(s): Stephen J. Herbert
Land Owner(s): Douglas and Julie Miller Family Trust
Location: Kahalu'u Beach Lots, North Kona, Hawai'i
TMK: (3) 7-8-014:006 Land Area: 11,820 square feet

Applicant's Request

1. Project Description:

The proposed development includes the removal of the existing decayed wood fence erected over a low stone wall at the south property line and the construction of a stone fence. The new stone fence would be constructed inside the existing low stone wall, which will remain in place.

2. Purpose of Project:

The existing wood fence has been replaced and repaired numerous times. However, the exposure to the elements continues to fade and rot the wood members creating a maintenance and security problem. The new 6-foot high stone fence would be built inside of the existing low stone wall that has the wooden fence above it.

3. Project Valuation: \$12,000

4. Determination:

According to Chapter 205A-22, Hawai'i Revised Statutes, and Planning Commission Rule No. 9-4(e) (1) (E), relating to the Special Management Area, "*Construction, reconstruction, demolition, or alteration of the size of any structure,*" is not exempt from the definition of "development." Therefore, the proposed removal of the existing wood fence and construction of a 6-foot high stone fence is considered "development" and requires a Special Management Area 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 as Open.
3. **County Zoning:** The parcel is zoned RS-7.5 (Single-Family Residential) by the County of Hawai'i.
4. **Special Management Area:** The subject property is located in the SMA.
5. **Flood Zone:** VE an X

Compliance with Objectives and Policies of Chapter 205A, Hawai'i 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 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 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 project cost of approximately \$12,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated September 13, 2011, states the following:

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

We have determined that the subject property is located within Flood Zone "VE and X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

Alteration of, or any new construction, improvements to repetitive loss structures or substantial improvements of structures within Parcel 7-8-014:006 will be subject to

the requirements of Chapter 27 - Flood Plain Management, of the Hawai'i County Code.

The proposed project is a floodplain encroachment that meets the definition of fill. Such fill is prohibited unless certified as required by Section 27-18(c)(3).

The proposed structure differs materially from the existing structure, having a higher load bearing capacity. Deflection of flood water could occur resulting in an adverse impact to adjacent properties.

As no building permit is required for the subject project, the above issues should be addressed as a condition of the SMA Special Management Area permitting process or by an Environmental Assessment as appropriate."

The proposed project will need to comply with the requirements of Chapter 27 - Flood Plain Management, of the Hawai'i County Code.

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 11-000195** is hereby approved to allow the removal of the existing wood fence and construction of a 6-foot high stone fence within the subject property.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 11-000194** 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. Prior to the commencement of any construction activities, submit documentation from the Department of Public Works, Engineering Division that the proposed improvements comply with Chapter 27, Floodplain Management, Section 18, Standards for construction.
4. As required by PD Rule 11-8 (b), the proposed removal of the wooden fence and construction of the stone fence shall be completed within (1) year from the date of this determination of minor structure or activity within the Shoreline Setback Area.
5. Prior to the commencement of any construction activities, a construction barrier and silt fencing, meeting with the approval of the Planning Director, shall be erected along the entire length of the proposed work area on the southern property boundary. The barrier shall remain in place until completion of the project.
6. Absolutely no rubbish or debris, resulting from the demolition and construction activities shall enter the neighboring parcel, TMK: (3) 7-8-014:005, containing the Kuemanu Heiau.
7. The area makai of the 40-foot shoreline setback line shall be kept clear of any rubbish or debris resulting from the demolition and construction activities at all times.

8. No heavy equipment shall be used in the shoreline setback area.
9. The public shall be allowed pedestrian lateral access makai of the certified shoreline at all times.
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.

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

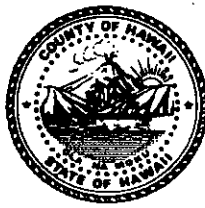
APPROVED:

OCT 18 2011


BJ LEITHEAD TODD
Planning Director

Date

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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DECLARATION OF EXEMPTION

FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER THE
AUTHORITY OF CHAPTER 343, HRS AND CHAPTER 11-200, HAR

Project Title: Remove Existing Wood Fence and Construct a Stone Fence

Project Number: SAA-11-000704, SMM-11-000195

TMK: (3) 7-8-014:006

Project Description: The proposed development includes the removal of the existing decayed wood fence erected over a low stone wall at the south property line and the construction of a stone fence within a portion of the shoreline setback area. The stone fence will be constructed to the same height as the existing wood fence and constructed inside the existing low stone wall, which will remain in place.

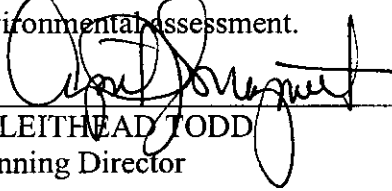
Consulted Parties: County of Hawai'i – Department of Public Works

Exemption Class: 11-200-8(A)2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

Date of Exemption: October 14, 2011

I have considered the potential effects of the above listed project as provided by Chapter 343, HRS and Chapter 11-200, HAR. I declare that this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

OCT 18 2011


BJ LEITHEAD TODD
Planning Director

Date