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PLANNING DEPARTMENT

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December 29, 2011

Mr. Mark Rodrigues
1080 Kilauea Ave
Hilo, HI 96720

Dear Mr. Rodrigues:

**SUBJECT: Special Management Area Use Permit Assessment Application
(SAA-11-000741)
Special Management Area Minor Use Permit (SMM-11-000200)
Applicant: Mark Rodrigues
Request: Removal of Rock to Enlarge Pond on Property
TMK: (3) 1-4-068:053; Vacationland Hawai'i, Puna, Hawai'i**

This is in response to your Special Management Area Use Permit Assessment Application received on November 22, 2011 for the removal of rock to enlarge the existing pond. Most of the rock removed from the pond will be hauled off site to the contractor's baseyard, not located in the Special Management Area. A small amount of rock will be used to do repairs to the existing perimeter rock walls on the subject property.

The subject property consists of 9,289 square feet, is zoned RS-10 (Single-family Residential) by the County of Hawai'i and designated Urban by the State Land Use Commission. The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcels as Low Density Urban. In addition, the entire property is located within the Special Management Area. Although it is in the Special Management Area, it is not located in a "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS). Please note that this application does not cover the work performed within the pond. Ponds that do not have a surface connection to the sea are regulated as "wetlands" by the U.S. Army Corps of Engineers.

Mr. Mark Rodrigues
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Special Management Area Determination:

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule 9-4(e)(1)(A) and (B) "development" does include "*Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste*", and "*Grading, removing, dredging, mining, or extraction of any materials.*" Therefore, the removal of rock to enlarge the existing pond and placement of rock on existing rock walls is considered "development" and requires either a SMA Minor Permit, issued by this department or a SMA (Major) Use Permit, granted by the Planning Commission.

Based on the above and pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No.11-000200 is hereby issued to allow the removal of rock to enlarge the existing pond and placement of rock on existing rock walls on the subject property. 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. 11-000200
Department of Public Works Memorandum dated December 20, 2011

xc w/encls: Long Range Planning Division
Planning Division

xc ltr only: Mr. Jesse K. Souki, Director
Office of Planning
State of Hawaii Department of Business, Economic
Development & Tourism
P.O. Box 2359
Honolulu, HI 96804-2359



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Special Management Area Minor Permit No. 11-000200

Project: Removal of Rock to Enlarge Pond on Property
Applicant: Mark Rodrigues
Owner: Mark and Kim Irene Rodrigues
Location: Vacationland Hawai'i, Puna, Hawai'i
TMK: (3) 1-4-068:053 **Land Area:** 9,289 square feet

Applicant's Request

1. Project Description:

The applicant proposes the removal of rock to enlarge the existing pond. Most of the rock removed from the pond will be hauled off site to the contractor's baseyard, not located in the Special Management Area. A small amount of rock will be used to do repairs to the existing perimeter rock walls on the subject property.

2. Purpose of Project:

The purpose of the project is to enlarge the existing pond and to add some depth to the pond.

3. Project Valuation: \$8,000

4. Determination:

5. According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule 9-4(e)(1)(A) and (B) "development" does include "Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste", and "Grading, removing, dredging, mining, or extraction of any materials." Therefore, the removal of rock to enlarge the existing pond and placement of rock on existing rock walls is considered "development" and requires an SMA Minor Permit, issued by this department.

State and County Plans

1. **State Land Use District:** The subject property is 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 subject property for Low Density Urban.

3. **County Zoning:** The subject property is zoned Single-family Residential (RS-10).
4. **Special Management Area:** The subject property is located in the SMA, but it is not located in a "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).
5. **Flood Zone:** A portion of the subject property is in an area designated as Flood Zone AE.

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 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 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 \$8,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated December 20, 2011, states the following:

"We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated December 12, 2011, and offer the following comments for your consideration.

A portion of the subject property is in an area designated as Flood Zone AE on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Flood Zone AE is the Special Flood Hazard Area inundated by the 100-year flood (1% chance of occurring in any given year).

We have no objections to the request provided the excavated material is either placed outside the flood zone or removed from the property."

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 11-000200** is hereby approved for the removal of rock to enlarge the existing pond and placement of rock on existing rock walls on the subject property, 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. 11-000200**, 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. Ponds that do not have a surface connection to the sea are regulated as "wetlands" by the U.S. Army Corps of Engineers. Applicant shall secure U.S. Army Corps of Engineers required permits or approvals for the proposed pond work within one year from the effective date of this SMA Minor Permit.
4. No placement of excavated material may occur in area of the property designated as Flood Zone AE.
5. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses. Equipment must not be refueled in the pond area. If visible petroleum, persistent turbidity or other unusual substances are observed in the pond water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance.
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 from 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:



BJ LEITHEAD TODD
Planning Director


Date