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PLANNING DEPARTMENT

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Special Management Area Minor Permit No. 12-000204

Project: Site Improvements, Landscaping, and Lateral Coastal Access Improvements
Applicants: Kevin Hayes
Land Owners: One Puakō Bay Associates LLC
Location: Lālāmilo, South Kohala, Hawai'i
TMK: (3) 6-9-002:001, 002, portion of 015 and 020
Land Area: The properties consist of 6.92 acres, as well as a portion of the 4.773 acre State-owned parcel (TMK: (3) 6-9-002:020).

Applicant's Request

1. Project Description:

The applicant proposes to prepare the site with some retaining walls and related site work, driveway access, and water laterals; implement a shoreline coastal access path; and install landscaping. More specifically the applicant proposes the following:

A. Site improvements:

1. Erosion control measures such as silt fences, sand bags and a crushed rock ingress/ egress shall be installed;
2. Demolition and removal of the existing barbed wire fence;
3. Construction of an 80-foot wide channel, on the western portion of lot 3, intended to handle and convey off-site floodwaters which approach the overall site from the south or mauka side;
4. Mass grading of the three privately-owned lots;
5. Construction of a 1-foot high wall, intended primarily for erosion control by directing any on-site generated water towards the on-site drainage basins;
6. Construction of a 1-foot high sea wall, running parallel to the ocean and beginning 40-feet mauka of the certified shoreline, to minimize on-site

runoff from directly entering Puakō Bay and instead be directed towards two new shallow drywells on the lots;

7. Construction of a 4-foot high retaining and fence wall meandering along the front property line;
8. Construction of a 16-foot wide A.C. driveway from Puakō Beach Road to each of the 3 privately-owned lots; and
9. Relocation of water service laterals for each of the 3 privately-owned lots.

B. Lateral coastal access improvements:

1. A 4-foot wide walking trail would be located generally following the shoreline within a 10-foot wide public access way corridor across of the subject site. The shoreline improvements would also continue on the adjoining State land. Except for some rock edgings, the trail will not be improved and will be left in its natural state;
2. Installation of trail signs identifying the Na Ala Hele Trail on State land at the western and eastern end of the privately owned parcels; and
3. Trimming and/ or removal of selected trees and introduction of some drought tolerant plant material.

C. Landscaping improvements:

1. Selected removal of some of the existing trees and introduction of drought tolerant plant material within the shoreline setback area; and
2. Planting of new trees, such as hau, wax banyan, akuu kuu, bougainvillea, and a salt tolerant and low maintenance grassy lawn called seashore paspalum;
3. Landscaping on both sides of the proposed 4-foot tall rock wall; and
4. Placement of imported sand at selected spots, mauka of the small 1-foot seat/ retaining wall located 40+ feet from the shoreline.

2. Purpose of Project:

The objectives of these improvements are intended to a) Increase the marketability of the proposed 3-lots by making certain landscaping and related improvements to the site so as not to burden future homeowners with flooding and related issues; and b) Assure full compliance with certain conditions of the prevailing SMA Assessment conditions, particularly relating to the coastal access.

3. Project Valuation: \$400,000.

4. Determination:

According to Hawai'i Revised Statutes (HRS) Chapter 205A-22 and Planning Commission (PC) Rule 9-4(e) (1) (A) and (B), "development" includes "*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 proposed site improvements, landscaping, and lateral coastal access improvements are considered "development" and require a Special Management Area Minor Permit.

State and County Plans

1. **State Land Use District:** The subject parcels are designated Urban by the State Land Use (SLU) Commission.
2. **General Plan:** The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation is Open and Low Density Urban.
3. **County Zoning:** The subject parcels are zoned Resort-Hotel -1,250 sq. ft per dwelling unit (V-1.25) and Open by the County of Hawai'i.
4. **Special Management Area (SMA):** The subject parcels are located entirely within the SMA.
5. **Flood Zone:** According to the Flood Insurance Rate Map (FIRM), the subject properties are located within Flood Zone AE, AO, VE and X.

Compliance with Objectives and Policies of Chapter 205A, Hawaii 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 \$400,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated January 31, 2012, states the following:

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

We have determined that the subject property is located within Flood Zones "VE, AE, AO and X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Flood Zones AE and AO are Special Flood Hazard Areas.

Alterations within a Special Flood Hazard Area are subject to the requirements of Chapter 27- Flood Plain Management, of the Hawai'i County Code. Filling which

raises the base flood elevation or aggravates flooding on adjacent parcels will not be permitted. The applicant's proposed fill and channelization of the AO zone will change the flood zone boundaries. Prior to receiving a grading permit for the proposed flood plain alterations, the applicant is required to submit a flood study of the alterations and certification that proposed fill will not increase the base flood elevation, prepared by a licensed civil engineer, and obtain a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency (FEMA). A letter of Map revision (LOMR) application, based on as-built grading plans, must be submitted within 60 days of completion of the alterations. In addition, such LOMR should be issued and effective prior to issuance of a building permit for any dwelling planned within the current AO Zone. A revised subdivision final plat should also be required, showing effective changes to the FIRM boundaries.

All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared, and the recommended drainage system shall be constructed meeting with the approval of DPW.

Any vehicular security gate should be set back from Puakō Beach Road to provide for gate swing and vehicle storage."

Pursuant to Planning Commission Rule 9-10(e), Special Management Area Minor Permit No. 12-000204 is hereby approved to allow the preparation of the site with some retaining walls and related site work, driveway access, and water laterals; implement a shoreline coastal access path; and install landscaping on the subject properties.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 12-000204** 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. All site work, lateral coastal access improvements and landscape improvements shall be completed within two (2) years from the effective date of this SMA Minor Permit.

Site improvements:

4. The applicant shall implement standard Best Management Practices (BMPs) for erosion control and water quality, including the ability to contain and clean up fuel, fluid or oil spills immediately for activities/uses. Grading shall not be performed during periods of heavy rain. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the nearby waters as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance.

5. A construction and silt barrier, meeting with the approval of the Planning Director, shall be erected along the 40-foot shoreline setback line fronting the subject properties prior to the commencement of any grading activities and shall remain in place until the work is completed. In cases where the barrier obstructs approved construction activities, please contact the Planning Department to inquire about relocating the barriers within the 40-foot shoreline setback area, provided lateral access is not impeded.
6. Prior to receiving a grading permit for the proposed flood plain alterations, the applicant is required to submit a flood study of the alterations and certification that proposed fill will not increase the base flood elevation, prepared by a licensed civil engineer, and obtain a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency (FEMA). A letter of Map revision (LOMR) application, based on as-built grading plans, must be submitted within 60 days of completion of the alterations. In addition, such LOMR should be issued and effective prior to issuance of a building permit for any dwelling planned within the current AO Zone. A revised final plat shall be submitted, showing effective changes to the FIRM boundaries.
7. The drainage channel shall be planted and maintained to resist erosion from flood waters. A hydraulic consultant shall verify that the proposed plantings will not compromise the capacity of the channel. The applicant shall submit this verification prior to any landscaping work within the proposed drainage channel. The applicant shall comply in all relevant respects with Chapter 27, Hawai'i County Code. The applicant shall form a homeowner's association or other entity which shall maintain the drainage channel, keeping it free of unwanted vegetation and debris, and maintaining the desired vegetation to reduce erosion potential.
8. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared, and the recommended drainage system shall be constructed meeting with the approval of the Department of Public Works.
9. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activities.
10. Any proposed vehicular security gate should be set back from Puakō Beach Road to provide for gate swing and vehicle storage.
11. Given the active erosion along the shoreline, should the 1-foot high seat wall begin to affect beach processes, artificially fix the shoreline, interfere with public access or public views to and along the shoreline, or alter the existing grade of the shoreline setback area due to erosion and/ or sea-level rise, the wall shall be removed from the shoreline area, at the landowner's expense.

Lateral coastal access improvements:

12. Other than the approved installation of the coastal access, signage, and related landscaping, no land alteration, grubbing, landscaping, demolition or construction activities, including, but not limited to, the stockpiling of debris, construction materials or equipment, shall occur in the shoreline setback area

without securing a prior written determination of minor structure or activity pursuant to PD Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.

13. The applicant shall comply with the provisions included in the Revised Shoreline Public Access Plan, approved on November 28, 2011.
14. The applicant shall comply with the provisions in the Adopt A Harbor Program Adoption Agreement with the Department of Land and Natural Resources Division of Boating and Ocean Recreation executed on January 18, 2012.

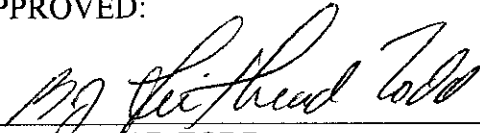
Landscaping improvements:

15. Prior to any clearing or removal, the applicant shall mark the trees, bushes or debris to be removed from the Shoreline Setback Areas and contact the Planning Department to schedule a site inspection.
16. Trees removed from the Shoreline Setback Areas shall be replanted on a 1:1 ratio with appropriate coastal native (including Polynesian introduced) vegetation.
17. As required by PD Rule 11-8 (b), the work within the shoreline setback area shall be completed within one (1) year from the date of this determination of minor structure or activity within the Shoreline Setback Area.
18. All green waste shall be collected from the Special Flood Hazard Areas and disposed of at appropriate locations designated by the Department of Environmental Management for green waste, or mulched within the portions of the subject properties located within Flood Zone "X".
19. No heavy equipment shall be used in the shoreline setback area.
20. Any further grading, grubbing, filling or other construction activity, including but not limited to, the construction of structures of any type shall require further review and approval as provided under Chapter 205A, HRS, and Rule 9, Planning Commission Rules of Practice and Procedure. This includes the determination of the shoreline setback area.
21. 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.
22. 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).

23. 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

FEB 13 2012

Date