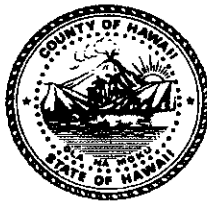


William P. Kenoi
Mayor



BJ Leithead Todd
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PLANNING DEPARTMENT

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Special Management Area Minor Permit No. 12-000220

Project: Clear Land to Control Overgrown Cactus and Trees
Applicants: Francis Ouye
Land Owners: Francis D. & Kyounghui Ouye and Gerald L. & Christine Sung
Location: Keei, South Kona, Hawai'i
TMK: (3) 8-3-006:004
Land Area: 28,750 square feet

Applicant's Request

1. Project Description:

The applicant is seeking approval of the after-the-fact clearing of the land of overgrown vegetation, consisting of a variety of cactus, trees and brush on the subject property. In addition, the applicant has stated that the site will be maintained by way of a cane knife to cut sprouting trees and spot poisoning will be applied. The sprouting cactus will continue to be pulled and removed.

2. Purpose of Project:

The objective is to clear the land to control the overgrown cactus and trees on the subject property. No structures are being proposed for the property.

3. Project Valuation: \$1,500.

4. Determination:

According to Hawai'i Revised Statutes (HRS) Chapter 205A-22 and Planning Commission (PC) Rule 9-4(e) (1) (B), "development" includes "*Grading, removing, dredging, mining, or extraction of any materials.*" Therefore, the after-the-fact clearing of the land of overgrown vegetation, consisting of a variety of cactus, trees and brush is considered "development" and requires either a Special Management Area Minor Permit or a Special Management Area (Major) Use Permit.

State and County Plans

- 1. State Land Use District:** The subject parcel is designated Conservation 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.
3. **County Zoning:** The subject parcel is zoned 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 and X.

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

Agency Consultation:

Due to the potential of historic sites on the subject parcel, the Department of Land and Natural Resources State Historic Preservation Division (SHPD) was consulted. Historic properties have been confirmed to be present on this property and possibly impacted by the unauthorized activity. The enclosed email correspondence from SHPD dated May 7, 2012, states the following:

"If the standard county permitting process had been followed, and SHPD had been given the opportunity to review this action prior to its commencement we would have requested that an Archeological Inventory Survey be conducted."

The Hawai'i County Fire Department was also consulted during the application processing to ensure that any potential fire hazards were addressed. The enclosed email correspondence from the Fire Department dated April 27, 2012, states the following:

"At this time, HFD does not deem this pile of vegetative combustible material an immediate danger to life safety or health. From your pictures and report, I also find that there is no fire code violation. I noted that there is no ignition source; therefore no immediate fire hazard exists, provided that they maintain the fire break (clearance of vegetation) around the piles. Our Fire code allows for combustible materials to be stored 3 feet to property lines if less than 6 feet tall, and as close as 10 feet to property lines for storage heights of 3-20 feet. Storage not allowed higher than 20 feet. Without the presence of animal decay, animal fats, or plant oils within the pile, it is unlikely that enough decomposition heat will be generated to self combust."

The enclosed Department of Public Works, Engineering Division memorandum dated May 15, 2012, states the following:

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

We have determined that all but the tip of the southwest corner of subject property is located within Flood Zones "X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Zone "X" is not a designated Special Flood Hazard Area. The tip of the southwest corner is located within Flood Zone "AE" based on the most recent FIRM for the County of Hawai'i. Alterations of Zone AE will be subject to the requirements of Chapter 27- Flood Plain Management, of the Hawai'i County Code.

A Zone X designation does not imply the property will be free from the flooding or flood damage. A property not in a Special Flood hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map.

We have determined that to date the property was only grubbed. To date, no ground alterations have taken place that require a grubbing or grading permit.

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 \$1,500 is not in excess of \$500,000.

Pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No. 12-000220 is hereby approved for the after-the-fact clearing and maintenance of the land of overgrown vegetation, consisting of a variety of cactus, trees and brush on the subject property on the subject properties.


Conditions of Approval

The Planning Director has approved SMA Minor Permit No. 12-000220 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. The fire break (vegetative clearing) shall continue to be maintained.
4. The grubbing pile shall not exceed 20-feet in height.
5. An Archeological Inventory Survey (AIS) shall be conducted and submitted to the DLNR State Historic Preservation Division for acceptance within 6 months and finalized within 1 year of the date of approval of this permit.

6. 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.
7. 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.
8. 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).
9. Any deviation from the above conditions will automatically result in the termination of this approval by the Planning Director. Failure to abide by the notice of termination shall result in Penalties as provided for in Planning Department Rule 11-14, Penalties.

APPROVED:


for BJ LEITHEAD TODD
Planning Director

MAY 25 2012

Date