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Special Management Area Minor Permit No. 12-000222

Project: After-the-Fact Approval to Allow the Existing Wall Built Within the Shoreline Setback Area to Remain in Place
Applicants: Gregory R. Mooers
Land Owners: Doris M. Scharpf Trust
Location: Lālāmilo, South Kohala, Hawai'i
TMK: (3) 6-9-005:001
Land Area: 19,401 square feet

Applicant's Request

1. Project Description:

The applicant is seeking approval of the after-the-fact construction of an 82.4-foot long, 2 to 4-foot high wall along the makai portion of the subject property. No additional construction is proposed. The wall is mauka of the certified shoreline and functions as a retaining wall.

2. Purpose of Project:

The request is pursuant to a settlement of an appeal from a County enforcement action relative to the wall. The wall was in place when the current land owner purchased the property. The Settlement and Mutual Release Agreement, dated January 15, 2009, between Doris M. Scharpf Trust and the County of Hawai'i, provided that the Trust could apply for permits necessary to modify a portion of the wall where it abutted a County-owned public access way and retain the remaining section of the wall. The County of Hawai'i previously authorized the emergency removal of the wall and stairs within the County property and the relocation of a 22.3-foot length of wall on the subject property. The emergency removal did not include the existing portion of the wall fronting the subject property.

3. Project Valuation: \$15,000.

4. Determination:

5. According to HRS Chapter 205A-22 and 9-4(e)(1)(A) states that "development" does include "Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste." Therefore, the after-the-fact construction of the wall is considered "development" and requires a Special Management Area Permit.

State and County Plans

1. **State Land Use District:** The subject parcel is 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 Low Density Urban.
3. **County Zoning:** The subject parcel is zoned RS-10 (Single-Family Residential) 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 property is located within Flood Zone VE and AE.

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 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 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 \$15,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated April 3, 2012, states the following:

"We reviewed the subject application and have no comments on or objections to the proposed request."


Pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No. 12-000222 is hereby approved to allow the existing wall built within the shoreline setback area to remain in place on the subject property.

Conditions of Approval

The Planning Director has approved SMA Minor Permit No. 12-000222 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. In order to ensure access along the shoreline for fishing and recreational purposes that the public has enjoyed for many years in this area, the landowner, applicant, successors or assigns shall not impede or otherwise restrict lateral pedestrian access in an area six (6) feet mauka of the seawall where the wall establishes the shoreline during times that the area makai of the seawall is inaccessible due to high water.
4. The landowner, applicant, successors, or assigns shall maintain the seawall on the subject property in a safe condition so that loose rocks and rubble do not adversely affect adjacent public properties
5. 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.
6. Any deviation from the above conditions will automatically result in the termination of this approval and the applicant shall be responsible to restore the area to its original condition within 30 days of notice of termination by the Planning Director. Failure to abide by this notice of termination shall result in Penalties as provided for in Planning Department Rule 11-14, Penalties.

APPROVED:


BJ LEITHEAD TODD
Planning Director

MAY 25 2012

Date