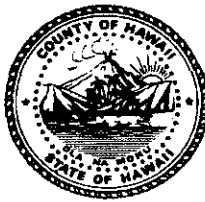


William P. Kenoi
Mayor



BJ Leithead Todd
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Special Management Area Minor Permit No. 12-000223

Project: After-the-Fact Construction of a Rock Wall and Chain Link Fence
Applicant: Joseph Gomes
Owner: Carlotta L Gomes Trust
Location: Waiaha 1st, North Kona, Hawai'i
TMK: (3) 7-5-018:070 **Land Area:** 8,276 square feet

Applicant's Request

1. Project Description:

A rock wall has been constructed within the shoreline setback area. We understand that the applicant has since removed a 20' portion of the rock wall and replaced it with chain link, nearest the ocean. The applicant has requested that this be allowed within the shoreline setback area for safety and health reasons.

2. Purpose of Project:

The property owners have had problems with trespassers engaging in illegal activities on the subject property. The wall does not affect beach processes or artificially fix the shoreline. The chain link was installed to allow potential high surf to pass through and to lesson any visual impacts to and along the shoreline.

3. Project Valuation: \$9,464

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(e) (1) (E) relating to the Special Management Area, the "*Construction, reconstruction, demolition, or alteration of the size of any structure*" is defined as "development." Therefore, the rock wall and chain link fence require an SMA Minor Permit.

State and County Plans

- 1. State Land Use District:** The parcel is located in the State Land Use Urban District.
- 2. General Plan:** The parcel is designated as Open by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
- 3. County Zoning:** The subject property is zoned RS-10 (Single-Family Residential).

Special Management Area: The subject property is located entirely within the Special Management Area (SMA) with frontage along the shoreline.

4. Flood Zone: 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

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 \$9,464 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated May 25, 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 the 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 the VE Zone will be subject to the requirements of Chapter 27- Flood Plain Management, of the Hawai'i County Code.

Assuming the site plan submitted with the application is accurate, the proposed project is located in Zone X according to the effective FIRM Panel 713D dated May 16, 1994.

With regard to exemption from HRS 343, we believe Exemption Class 3 is more appropriate."

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 12-000223** is hereby approved for the after-the-fact construction of a rock wall and chain link fence on the subject parcel, subject to the applicant's compliance with the conditions of approval as specified below.

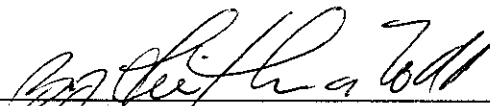
Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 12-000223**, 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. 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.
4. 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.
5. 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).
6. 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:



BJ LEITHEAD TODD
Planning Director

MAY 30 2012

Date