

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

Special Management Area Minor Permit No. 12-000230

Project: After-the-fact Permit for Installation of Fence and Rock Wall
Applicant: Andgen Revocable Living Trust
Land Owner: Andgen Revocable Living Trust
Location: Kaumalumu-Beach Sec, North Kona, Hawai'i
TMK: (3) 7-7-004:062
Land Area: The property consist of 4.768 acres

Applicant's Request

1. Project Description:

The applicant has applied for an after the fact permit for the installation of a fence and rock wall on the subject property which included grubbing around the perimeter of the property.

2. Purpose of Project:

The objective of obtaining this permit is to comply with conditions of Special Management Area (SMA) Violation (SMA/V 08-080W) sent on August 12, 2008.

3. Project Valuation: \$18,000

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 site improvements are considered "development" and require a Special Management Area Minor Permit.

State and County Plans

- 1. State Land Use District:** The subject parcel is designated Urban and Agriculture 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 Residential (RS-7.5) and Agricultural (A-5a) by the County of Hawai'i.
4. **Special Management Area (SMA):** The subject parcel is located entirely within the SMA.
5. **Flood Zone:** According to the Flood Insurance Rate Map (FIRM), the subject property is located within Flood Zone AE and X.

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

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 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 objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated project cost of approximately \$18,000 is not in excess of \$500,000.

On February 8, 2008, the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), sent a letter outlining required steps to protect historical features on the subject parcel, including:

1. ***A Damage Assessment and Mitigation Plan for site 24058.*** We have no record of a damage assessment report and mitigation plan and were not able to confirm with SHPD that this requirement was met after several attempts. However, the extent of recent mechanical disturbance of site 24058 was assessed in the report: *Archaeological Site Preservation Plan TMK: (3) 7-7-004:062 Kaumalumalu and Pahoehe 1 Ahupua 'a, North Kona District, Island of Hawai 'i* by Haun and Associates, which was reviewed and accepted by SHPD on March 9, 2012.
2. ***A Preservation Plan that covers 16 "preservation" sites.*** See Plan reference above.
3. ***A Burial Treatment Plan for three (3) Burial Sites. "Burial Treatment Plan Sites 8057, 8061, and 24059 TMK: (3) 7-7-04: 62 Lands of Kaumalumalu and Pahoehe 1, North Kona District, Island of Hawai 'i ",*** Haun & Associates,

September 2010; Report 688-090210, was reviewed and approved by SHPD on November 23, 2010.

We have determined that you have met the above requirements to the Planning Department's satisfaction. Should SHPD require further preservation work, the applicant shall comply.

The enclosed Department of Public Works, Engineering Division memorandum dated May 21, 2012, states the following:

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

The application is incomplete as it lacks the required site plan of the fence and wall.

We have determined that all but the southwest corner of the subject property is located in Flood Zone "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. A Zone "X" designation does not imply the property will be free from flooding or flood damage. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted in the FIRM or from a local drainage problem not shown on the map.

The southwest corner is located with Flood Zone "AE Floodway" based on the most recent FIRM for the County of Hawaii. Alterations of Zone AE are subject to the requirements of Chapter 27 – Flood Plain Management, of the Hawaii County Code. The AE Zone is depicting the inundation area of Kaumalumu Drainageway during the base flood event. Except for grubbing less than one acre, the AE Zone shall not be altered without first obtaining approval from DPW. A flood study may be required under Chapter 27 of Hawaii County Code for watercourse alterations and obstructions (such as the subject stone wall)."

As stated above, a flood study may be required for watercourse alterations and obstructions in the AE floodway. However, the applicant has submitted a copy of a Permit to Work within the County Right-of-Way granted by the Department of Public Works (DPW) on February, 28, 2008. This permit shows the subject rock walls on the site plan. After discussion with DPW Engineering, it was decided that the applicant needs to work with DPW to resolve the encroachment.

Pursuant to Planning Commission Rule 9-10(e), Special Management Area Minor Permit No. 12-000230 is hereby approved for the after-the-fact grubbing and construction of a fence and rock walls around the subject property.


Conditions of Approval

The Planning Director has approved SMA Minor Permit No. 12-000230 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 applicant is required contact the Department of Public Works – Engineering Division to resolve the possible encroachment of the rock walls in the AE flood zone.
4. 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.
5. 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.
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.

APPROVED:


BJ LEITHEAD/TODD
Planning Director

JUL 18 2012

Date