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July 22, 2015

Mr. John St. George
P.O. Box 983
Pepe'ekeo, HI 96783

Dear Mr. St. George:

**SUBJECT: Special Management Area Use Permit Assessment Application
(SAA 15-001290)
Special Management Area Minor Use Permit (SMM 15-000337)
Applicant(s): John and Cathleen St. George
Landowner (s): Pepe'ekeo Holdings LLC, John and Cathleen St. George
Request: Construction of a Fence and Tree Removal
Tax Map Key (s): (3) 2-8-008:003 (Por.) and 2-8-008:046, Kaupakuea,
South Hilo, Hawai'i**

We have reviewed the subject Special Management Area Use Permit Assessment Application (SAA 15-001290) submitted on May 11, 2015. The applicant proposes the construction of a perimeter fence within a private shoreline access easement to discourage trespassing, littering and the frequent unauthorized vehicular traffic on an easement within the subject parcel 003. We also received additional information by email correspondence on July 16, 2015, requesting the cutting and removal of invasive iron wood trees along the cliff on parcel 003.

The subject easement consists of approximately 3 acres and is located on a portion of parcel 003, directly seaward of parcel 046. The project area is zoned Agricultural (A-20a) by the County of Hawai'i, and is designated Agricultural and Conservation by the State Land Use Commission. The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the project area as Important Agricultural Land and Open. The parcels are located entirely within the Special Management Area (SMA), with parcel 003 fronting the sea cliff.

Special Management Area Determination:

According to Chapter 205A-22, HRS, and Planning Commission (PC) Rule No. 9-4(e) (1) (E) and 9-4(e) (1) (B), "development" includes "*Construction, reconstruction, demolition, or alteration of the size of any structure*" and "*Grading, removing, dredging, mining, or extraction of any materials*". Therefore, the construction of a fence and tree removal is considered to be development and will require review against the Special Management Area rules and regulations.

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Determination of Minor Activity within Shoreline Setback Area:

Pursuant to HRS 205A-45 and Planning Department (PD) Rule 11-5 (a) "*All lots which abut the shoreline shall have a minimum shoreline setback line of forty feet.*" We understand that the applicant is proposing to remove invasive trees within 40-foot shoreline setback area and along the top of the cliff. Pursuant to PD Rule 11-7, the proposed activities would be allowed in the shoreline setback area only upon the issuance of a Determination of Minor Structure or Minor Activity by the Planning Director or the approval of a Shoreline Setback Variance by the Planning Commission.

PD Rule 11-8 provides that a Determination of Minor Structure or Minor Activity may be granted by the Planning Department where the proposed structure or activity would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline. Since the project area is along the top of a sea cliff, the proposed activities are not expected to affect beach processes or artificially fix the shoreline. The proposed tree removal is not within the public access easement on the property. In addition, public views to and along the shoreline from the shoreline setback area are likely to be enhanced by the proposed activities. Consequently, we have determined that the proposed tree removal constitutes a minor activity and will be allowed in the shoreline setback area.

Compliance with Environmental Impact Statement Regulations (Chapter 343, HRS):

According to HRS Chapter 343-5, an environmental assessment shall be required for actions that propose any use within a shoreline area. However, the State of Hawai'i Department of Land and Natural Resources, Office of Conservation and Coastal Lands by letter dated June 29, 2015 has determined that the project is exempt from the filing of an Environmental Assessment pursuant to Hawai'i Administrative Rules §11-200-8 (3).

In view of the above and pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No.15-000337 is hereby issued for the SMA approval of the construction of a fence and invasive tree removal. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

If you have questions, please feel free to contact Bethany Morrison of this department at (808) 961-8138.

Sincerely,



DUANE KANUHA
Planning Director

BJM:

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Enclosures: SMM No.: 15-000337
DPW Memorandum dated July 2, 2015

cc w/Encls.: Planning Division (via email)

cc ltr. only: Mr. Leo Asuncion, Acting Director
Office of Planning, DBEDT
State of Hawaii Department of Business, Economic
Development & Tourism
P.O. Box 2359
Honolulu, HI 96804-2359

Mr. Sam Lemmo, Administrator
Office of Conservation and Coastal Lands
State of Hawai'i Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809



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Special Management Area Minor Permit No. 15-000337

Project: Construction of a Fence and Tree Removal
Applicant: John and Cathleen St. George
Landowner: Pepe'ekeo Holdings LLC, John and Cathleen St. George
Location: Kaupakuea, South Hilo, Hawai'i
TMK: (3) 2-8-008:003 (Por.) and 2-8-008:046 **Land Area:** 3 acres

Applicant's Request

1. Project Description:

The applicant proposes the construction of a perimeter fence within a shoreline access easement. The fence will be constructed of standard pressure treated wood posts and galvanized woven wire and will be kept in good repair. The applicant also proposes the cutting and removal of invasive iron wood trees along the cliff. The trees will be felled in the meadow, with any trees leaning over the ocean winched and dropped in the meadow as well.

2. Purpose of Project:

The purposes of the project are to discourage trespassing, littering and the frequent unauthorized vehicular traffic, and to remove hazardous and invasive trees on an easement within the subject parcel 003.

3. Project Valuation: \$5,500.

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission (PC) Rule No. 9-4(e) (1) (E) and 9-4(e) (1) (B), "development" includes "Construction, reconstruction, demolition, or alteration of the size of any structure" and "Grading, removing, dredging, mining, or extraction of any materials". Therefore, the construction of a fence and tree removal is considered to be development and will require will require a review against the Special Management Area rules and regulations.

State and County Plans

- 1. State Land Use District:** The project area is located in the State Land Use Agricultural and Conservation district.
- 2. General Plan:** The project area is designated as Important Agricultural Land and Open by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.

3. **County Zoning:** The parcels are zoned Agricultural (A-20a) by the County of Hawai'i.
4. **Special Management Area:** The parcels are located entirely within the Special Management Area (SMA), with parcel 003 fronting the sea cliff.
5. **Flood Zone:** X.

Compliance with Objectives and Policies of Chapter 205A, Hawai'i 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 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

1. 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.
2. The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.
3. The estimated project cost of \$5,500 is not in excess of \$500,000.
4. The State of Hawai'i, Department of Land and Natural Resources, Office of Conservation and Coastal Lands found the project exempt from the preparation of an environmental assessment, in correspondence dated June 29, 2015.
5. The enclosed Department of Public Works, Engineering Division memorandum dated July 2, 2015, states the following:

"We reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated June 2, 2015 and have no objections to the request.

The subject parcels are in an area that is not mapped by the Federal Emergency Management Agency (FEMA) and is noted as an area of "minimal tsunami inundation." We designate such parcels as Zone X (an area determined to be outside the 500-year floodplain). The Federal Government and the County of Hawai'i do not

have any regulations for developments within areas of minimal tsunami inundation and Zone X."

6. Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 15-000** is hereby approved for the construction of a fence on the subject parcels 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. 15-000**, 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. A Conservation District Use Permit from the Board of Land and Natural Resources or other written approval from the Department of Land and Natural Resources Office of Conservation and Coastal Lands must be obtained for the project within one (1) year from the date of approval of this permit.
4. At no time shall the proposed activities or the finished fence impede lateral public access. Furthermore should the lateral public access easement become impassible or unsafe due to erosion or cliff loss, the applicant shall allow for a mauka realignment of lateral public access a to safe distance from the top of the pali as determined by the Planning Department.
5. All green waste shall be properly disposed of in a manner meeting with the approval of the Planning Department or outside the SMA, subject to the requirements of Chapter 20 - Refuse, of the Hawai'i County Code and may require a Landfill Disposal Permit from the Department of Environmental Management, Solid Waste Division.
6. All tree removal activities in the Shoreline Setback Area shall be completed within one year from the date of approval of this permit.
7. No green waste or loose soil from the top of the cliff is permitted along the shoreline. The applicant may be subject to Penalties as provided for in Planning Department Rule 11-14, Penalties, for any material that falls into the shoreline as a result of the applicant's activities.
8. 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.
9. 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.

10. 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).

11. 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 (808) 961-8138.

APPROVED:



DUANE KANUHA
Planning Director

JUL 22 2015

Date