



PLANNING COMMISSION

25 AUPUNI STREET • HILO, HAWAII 96720

COUNTY OF
HAWAII

CERTIFIED MAIL

March 3, 1987

Mr. Robert L. Smith
A Law Corporation
77-6400 Nalani Street, Suite 200
Kailua-Kona, HI 96740

Dear Mr. Smith:

Special Management Area (SMA) Use Permit and
Shoreline Setback Variance Applications
Petitioner: Gloria Green
TMK: 7-5-18:4

The Planning Commission, after duly held public hearings on January 28, and February 25, 1987, voted to approve your applications, Special Management Area Use Permit No. 254 and Shoreline Setback Variance Permit No. 634, to allow the construction of a privacy wall, mauka-makai public pedestrian shoreline access easement, additional fill material, retention of existing backfill material and modifications to the existing seawall within the 20-foot shoreline setback area at Waiaha 2nd, North Kona, Hawaii.

Approval of the special management area request is based on the following:

The proposed development is consistent with the objectives, policies and Special Management Area Guidelines as established by Chapter 205-A, Hawaii Revised Statutes (HRS). These objectives and policies provide guidance for the preservation, protection and development of coastal resources of the State and County.

The proposal would allow the construction of a privacy wall, mauka/makai public pedestrian shoreline access easement, additional fill material, retention of existing backfill material and modifications to the existing seawall. These improvements should not have any significant adverse impact on the environment or ecological resources of the Special Management Area.

MAR 3 1987

Mr. Robert L. Smith
March 3, 1987
Page 2

The subject property has been extensively improved, therefore, there are no rare or endangered species of flora or fauna present on the site nor are there any sites of historic significance on the subject property.

The proposed project will improve the recreational value of the area by providing a mauka/makai public pedestrian shoreline access which will facilitate the lateral public pedestrian access along the shoreline.

No adverse impacts on air and water quality are expected to be generated by the proposed project. Dust emissions and noise during the construction phase can be mitigated by existing regulations.

Approval of the shoreline setback variance request is based on the following:

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of the improvements have disturbed the natural shoreline processes and have caused erosion of the shoreline. To prevent unnecessary encroachment of structures and other improvements upon the shoreline, the legislature felt that it is in the best interest of the public to establish shoreline setbacks and to regulate the uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be required to be done or constructed within the shoreline setback area for protection of certain shoreline properties. In recognizing this need, the Legislature authorized the respective authorities within the various counties, in this case the Planning Commission, to grant variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205-35(b) of the Hawaii Revised Statutes, and Section 8.9 of the Planning Commission's Rule No. 8, related to Shoreline Setback, the Planning Commission may grant variances for certain actions and improvements within the shoreline setback area if it is found that:

1. Such structures, activities or facilities are in the best public interest; or
2. Hardship will be caused to the applicant if the proposed structure, activity or facility is not allowed or that portion of the land within the shoreline setback.

Mr. Robert L. Smith
March 3, 1987
Page 3

The proposed project is not anticipated to have any substantial adverse environmental or ecological effects.

The establishment of the mauka/makai public pedestrian access easement will facilitate lateral shoreline access. Therefore, the proposed improvements including the establishment of a mauka/makai public pedestrian shoreline access is clearly in the public interest.

Based on the foregoing, it is determined that the granting of the request will not create a significant adverse effect on the environment and, therefore, will not be contrary to the purpose and intent of Chapter 205-A, HRS, relating to Coastal Zone Management; Rule No. 8 and Rule No. 9 of the Planning Commission relating to Shoreline Setback and the Special Management Area, respectively; the Hawaii County Zoning Code or the General Plan. Furthermore, it is determined that the approval of the subject shoreline setback variance request will be consistent with and supportive of the public interest.

Approvals of the special management area use permit and shoreline setback variance permit requests are subject to the following conditions:

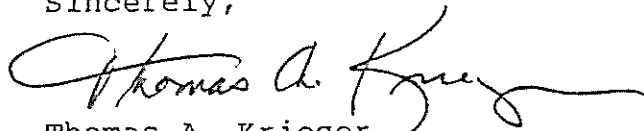
1. The petitioner, its successors or assigns shall be responsible for complying with all conditions of approval.
2. The applicant, its successors and assigns, shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury and death arising out of any act or omission of the applicant, its successor, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. A minimum 6-foot wide mauka/makai public pedestrian easement to the shoreline shall be provided. The type of improvements within the public pedestrian easement, its specific location including signage related to public access shall be reviewed and approved by the Planning Director. The access easement shall be recorded with the Bureau of Conveyances to provide a perpetual right-of-pedestrian shoreline access to the public. A copy of the recorded access document shall be filed with the Planning Department.

Mr. Robert L. Smith
March 3, 1987
Page 4

4. Plans for the proposed improvements shall be submitted to the Planning Department for plan approval within three months from the effective date of the SMA Use Permit.
5. Construction of the proposed improvements shall commence within three months from the date of receipt of Final Plan approval and be completed within three months thereafter.
6. Comply with all other applicable rules, regulations and requirements.
7. The Planning Director may administratively grant extensions to the foregoing time conditions. Further, should the Director determine that any of the conditioned have not been met or substantially complied with in a timely fashion, the permits shall be void.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Thomas A. Krieger
Chairman, Planning Commission

cc: Ms. Gloria Green
Mr. John Parazette
Mr. Ron Brown
Mr. John P. Dinmore
Mr. Jerry Rothstein
Mr. Douglas Blake
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Hawaii County Services, Deputy Managing Director's Office
DPED w/bkgd.