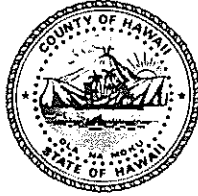


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 Fax (808) 961-9615

#### CERTIFIED MAIL

August 5, 1993

Mr. Sidney Fuke  
Sidney Fuke and Associates  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

Special Management Area Use Permit Application (SMA 90-11)  
Shoreline Setback Variance Application (SSV 90-1) ✓  
Applicant: Paul Mickelsen  
Revised Request: Proposed Walkway, Landscaping and Related  
Improvements

Tax Map Key 6-9-02:25

The Planning Commission at its duly held public hearing on July 29, 1993, voted to approve the above-referenced applications. Special Management Area (SMA) Use Permit No. 343 and Shoreline Setback Variance No. 646 are hereby issued to allow the construction of a walkway, landscaping and related improvements in conjunction with the construction of a single-family dwelling within the 40-foot shoreline setback area of a parcel approximately 28,967 square feet in area. The property is located makai of Puako Drive approximately 4,000 feet from its intersection with Queen Kaahumanu Highway, Lalamilo, South Kohala, Hawaii.

Approval of the Special Management Area (SMA) Use Permit request is based on the following:

The development will not have any significant adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest. The proposed landscaping, related irrigation improvements and walkway have been determined to be allowable activities in the "VE" Zone of the Flood Insurance Rate Map. The creation of lawn and landscaping will help to stabilize the shoreline conditions. The applicant has indicated that he intends to designate the

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walkway as lateral shoreline access available for use by the public.

The development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and the Special Management Area guidelines. A lateral shoreline access will be dedicated as an easement for public use. Increased recreational use and public benefit will occur as a result of this improvement.

The development is consistent with the General Plan, Zoning Code and other applicable ordinances. The proposed improvements are accessory uses one commonly finds with single-family residential use.

Approval of the Shoreline Setback Variance request is based on the following:

Rule 8 in Section 8-14(a) states "A variance may be granted for a structure or activity otherwise prohibited by these rules if the Planning Commission finds in writing, based on the record, that the proposed structure or activity is necessary for or ancillary to: (1) Cultivation of crops; (2) Aquaculture; or (3) **Landscaping**.

Further, Section 8-14(b) states a variance may also be granted upon a finding that, based upon the record, the proposed structure or activity meets one of the following standards: (1) Shoreline-dependent Facility Standard; (2) **Public Interest Standard**; or, (3) Hardship Standard. The proposed development is clearly landscaping improvements. A dedicated lateral public access easement is clearly in the public interest. The proposed development is a reasonable use of land which will benefit both the landowner and the public.

Approval of the Special Management Area (SMA) Use Permit and Shoreline Setback Variance are subject to the following conditions:

1. The applicant, successors or its assigns shall comply with all of the stated conditions of approval.
2. Construction of the improvements approved by this Special Management Area Use Permit and Shoreline Setback Variance shall be completed within five years from the effective date of these approvals.
3. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or

coral alignments, paving or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

4. The improved lava rock and pebble walkway shall be designated as a lateral shoreline easement in favor of the general public and shall be recorded with the Bureau of Conveyances. A copy of the recorded instrument shall be submitted to the Planning Director within one year from the effective date of these approvals.
5. The minimum 40-foot shoreline setback line measured from a current (at the time of staking) Certified Shoreline Survey shall be staked by a registered land surveyor prior to any land alterations in the affected area. Written confirmation shall be submitted in conjunction with the required/requested permits. The only improvements which shall be allowed within the 40-foot shoreline setback area are those granted by the Planning Commission. A line 10 feet mauka of the certified shoreline shall also be staked and all machinery use for these improvements shall be confined mauka of this line. All improvements makai of this 10 foot line shall be completed by hand.
6. During construction, fugitive dust and runoff sedimentation mitigating measures meeting construction industry standards shall be implemented at all times. At a minimum, all soil material shall be stockpiled at a distance greater than 40 feet mauka from the certified shoreline.
7. An extension of time for the performance of conditions within the SMA Use Permit 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 applicants, 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 general plan or zoning code; (c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; (d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year); and (e) if the applicant should require an additional extension

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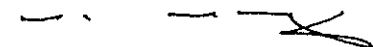
of time, the Planning Director shall submit the applicant's request to the Planning Commission for appropriate action.

8. Should any of the conditions not be met or substantially complied with in a timely fashion, after the Planning Director has given the permittee notice, this permit may be voided by the Planning Commission.

These approvals do not, however, sanction the specific plans submitted with the applications as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please feel free to contact Rodney Nakano of the Planning Department at 961-8288.

Sincerely,



or Donald L. Manalili, Chairman  
Planning Commission

RKN:jdk  
LMicke02.PC

xc: Honorable Stephen K. Yamashiro, Mayor  
Planning Director  
Mr. Paul Mickelsen  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
West Hawaii Office  
Office of State Planning, CZM Program w/background  
Department of Land and Natural Resources  
Plan Approval Section