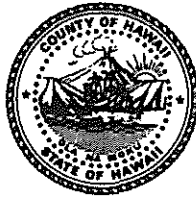


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
Z 095 323 280

January 25, 1996

Mr. Fred Duennebier, UHM SOEST
Chairman and Principal Investigator
University of Hawaii Geology and Geophysics
Department, HUGO Project
2525 Correa Road
Honolulu, HI 96822

Dear Chairman Duennebier:

Shoreline Setback Variance (SSV 95-1)

Applicant: University of Hawaii Geology and Geophysics
Department, HUGO Project

Request: To Allow an Unmanned Educational and Research Facility That
Uses a Cable That Will Connect the Submarine Volcano Loihi to the Big Island
Tax Map Key: 9-5-14:49; Portions of 1, 7 and 29

The Planning Commission at its duly held public hearing on January 11, 1996, voted to approve the above-referenced application. Shoreline Setback Variance Permit No. 651 is hereby issued to allow a junction vault and fiber optic cable connection from the proposed unmanned educational and research facility to the submarine volcano Loihi. The project site is located on the makai side of Highway 11 at Whittington Beach Park at Honuapo, Kau, Hawaii.

Approval of this 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 process and have caused erosion of the shoreline. To prevent unnecessary encroachment of structures and other improvements upon the shoreline, the Legislature believed it was in the best interest of the public to establish shoreline setbacks in order to regulate the uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be required 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

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Mr. Fred Duennebier, UHM SOEST
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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 8-14(b) of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations based on the following criteria for approval:

A variance may also be granted upon grounds of *Hardship* only if:

- a) The applicant would be deprived of reasonable use of the land if required to comply fully with this rule;
- b) The request is due to unique circumstances and does not draw into question the reasonableness of this rule;
- c) The request is the practicable alternative which best conforms to the purpose of this rule; and
- d) The request is a reasonable use of the land based on factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

Hardship will be caused to the applicant if the proposed improvements are not allowed within the shoreline setback area and the applicant would be deprived reasonable use of their land. In addition, since this request is due to the unique circumstances, it does not draw into question the reasonableness of Rule 8 regarding the Shoreline Setback Area. The University of Hawaii proposes to establish an unmanned educational research facility that uses a cable that will connect to the submarine Volcano Loihi, located approximately 21 miles to the southeast of the Big Island at a depth of 3,000 feet. The experiments to be conducted are expected to provide valuable tsunami hazard information. Specific improvements proposed within the 40-foot shoreline setback area are buried cables and a junction vault.

The request is a practical alternative that conforms to the purpose of this rule. Due to the location of the volcano Loihi approximately 20 miles southeast of the Park, the subject site serves as an appropriate site. Another alternative site was looked into; however, there were some cultural concerns, and the applicant was unable to negotiate a lease with the landowner.

The nature of the proposed improvements are not anticipated to interfere with public access to shoreline areas or existing view planes as designed. During the construction phases, the applicant proposes to rope off the work area. As required by SMA Minor Use Permit No. 30, the applicant would be required to provide continuous lateral shoreline public access within Whittington Beach Park during construction activities. In addition, the limited nature of the proposed improvements are not anticipated to affect historical sites or nearby coastal water quality.

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The request is a reasonable use of the land based on factors such as shoreline conditions, erosion, surf and flood condition and the geography of the lot as it relates to health and safety. Portions of the proposed project that involve Honupo Pier fall within the State Land Use Conservation district, and also falls within the Department of Army - Corp of Engineer's jurisdiction. Therefore, appropriate health and safety issues as well as impacts to the ocean floor would be addressed in those permits. To ensure public safety during the construction phases, cable installation areas shall be roped off. The applicant is also encouraged to take preventive measures to reduce soil erosion when vegetation is removed.

Given the limited nature and area of the proposed improvements, approval of this request would allow for a reasonable use of the land which would not affect shoreline views, public access, and the environment or ecology of the shoreline area. Based on the above, the establishment of the Hawaii Undersea Geo-Observatory (HUGO) Project within the project site will be consistent with the Shoreline Setback Law pursuant to Chapter 205-31, HRS, and the criteria established in Rule No. 8 of the Planning Commission's Rules of Practice and Procedure.

Approval of this request is subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval;
2. The applicant, its successors or 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 successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. The applicant shall comply with SMA Minor Use Permit No. 39.
4. During the construction phases, cable installation areas shall be roped off.
5. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources and Planning Department shall be immediately notified. Subsequent work shall proceed upon a archaeological clearance form the Planning Director when it finds that sufficient mitigative measures have been taken.
6. Upon compliance with all conditions of approval, and upon completion of the proposed work, the applicant shall submit a final status report, in writing, to the Planning Director.
7. An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:

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- (A) 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.
 - (C) 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).
8. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke this permit.

This approval does not, however, sanction the specific plans submitted with the application 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 Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

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cc: Honorable Stephen K. Yamashiro, Mayor
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Office of State Planning, CZM Program w/background
Department of Land and Natural Resources
Mr. Bob Jordan