

## County of Hawai'i

### PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

January 11, 2010

Mr. Jean-Paul Barral  
Office des postes et télécommunications de Polynésie française (OPT)  
P.O. Box 605  
Papeete 98713, Tahiti, French Polynesia

Dear Mr. Barral:

Shoreline Setback Variance Application (SSV 09-000004)  
Applicant: Office des postes et télécommunications de Polynésie française (OPT)  
Request: To Allow Activities Relating to the Installation of a Fiber Optic Cable  
System at Spencer Beach Park  
Tax May Key: 6-2-2:8

The Leeward Planning Commission at its duly held public hearing on December 9, 2009, voted to approve the above-referenced application to allow the installation of an inter-island subsea fiber optic cable and related improvements within the 40-foot shoreline setback area. The project site is at Samuel M. Spencer Park and is located at the end of Spencer Beach Road, Kawaihae 2<sup>nd</sup>, South Kohala, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Shoreline Setback Variance to allow installation of a subsea fiber optic cable within the forty-foot shoreline setback area. The following activities will occur within the shoreline setback area (project site): stage construction equipment and excavate an area around the existing beach manhole, pull cable up the beach from the cable ship and connect to the beach manhole, install an ocean grounding bed near the beach manhole, apply articulated pipe over the cable to protect it, excavate a trench from the beach manhole to the shoreline to bury the cable, backfill the trench and restore the beach to its original condition. No sediments will be removed from the project site nor will materials be introduced to the beach to fill the excavated area. Activities within the project site area anticipated to occur over a 10 to 12 day period. All cable installation activities occurring seaward of the certified shoreline have been permitted through a Conservation District Use Permit issued by the Board of Land and Natural Resources.

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 these structures and activities have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves, which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be constructed within the shoreline setback area if these improvements are clearly in the public interest. 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 205A-46(a)(7) of the Hawai'i Revised Statutes, and Section 8-10 of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations.

**The proposed request would meet the Public Interest Standard of Rule 8, Section 8-10(b)(2).** In reviewing the request against the criteria to allow a variance, the Planning Director has determined that the request for a Shoreline Setback Variance to allow installation of a subsea fiber optic cable within the shoreline setback area **does meet the criteria** set forth in Rule 8, Section 8-10 (b)(2) (Public Interest Standard).

Section 8-10(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 of this subsection:

(2) Public Interest Standard.

A variance may be granted for an activity or structure which is undertaken by a public agency or by a public utility regulated under Chapter 269, Hawai'i Revised Statutes, or a private facility or improvement which is undertaken by a private entity and is clearly in the public interest; provided that the proposal is the practicable alternative which best conforms to the purpose of this rule.

The proposed request meets the “Public Interest Standard” for the following reasons:

The applicant is a “public establishment” created by the French Polynesian government under their laws and is wholly controlled by the government to provide domestic and international telecommunication services in French Polynesia. The proposed cable project is part of the Honotua fiber optic cable system, which will upgrade telecommunications between French Polynesia and the U.S.A., for which there is currently no direct fiber optic cable link. The system will also interconnect in Hawai‘i with trans-Pacific systems extending from the west coast of the U.S.A. to Japan, China and other rapidly developing western Pacific-rim countries. The international connectivity provided by the cable system will increase reliability and security in telecommunication networks, thereby reducing the potential for call failures during natural or other disasters. The proposed cable landing area at Spencer Beach Park is an established cable landing site for telecommunications infrastructure and was specifically selected as the best alternative location for this reason, as installation at this site will minimize impacts to the shoreline setback area.

Additionally, Section 8-10(c) states “No variance shall be granted unless appropriate conditions are imposed as applicable:

- (1) To comply with Chapters 10 and 27 of the Hawai‘i County Code (HCC) relating to Erosion and Sedimentation Control and Flood Control, respectively;
- (2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;
- (3) To minimize risk of adverse impacts on beach processes;
- (4) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (5) To minimize adverse impacts on public views to, from, and along the shoreline.

Erosion/Sedimentation/Flood Control: According to the Department of Public Works (DPW), the sandy beach area where the cable is proposed to be installed is located within Flood Zone “VE” and “AE.” However, the cable installation does not conflict with any regulations in HCC, Chapter 27, related to Flood Control. The applicant will implement standard best management practices during beach excavation to prevent sand sediment from eroding into the nearshore waters. Additionally, a condition of approval will require the applicant comply with HCC, Chapter 10, related to Erosion and Sedimentation Control as required by DPW.

Shoreline Access: An area of the beach approximately 10 meters by 100 meters parallel to the shoreline and an area along the cable alignment (approximately 53 meters in length) from the shoreline to the beach manhole will be affected by cable installation activities. These work areas will be cordoned off from public access using temporary safety fencing, markers and site control during the duration of the activities. Use of these areas of the beach for recreation will be restricted; however other areas of the park will remain accessible. In order to provide the general public notice of the temporary access restriction, a condition of approval will be added requiring the applicant to publish notice of the cable installation activities in the island's two newspapers.

Beach Processes and Shoreline Structures: No permanent shoreline structures are proposed that would fix the shoreline or adversely affect beach processes. All excavated areas of the sandy beach will be restored to their original condition.

Shoreline Public Views: The beach at Spencer Beach Park, known as Ohaiula Beach, is listed in the general plan as an area of natural beauty. Views from the project site look directly at the open ocean. Construction equipment will be visible to the public using the beach park and the cable transport ship will be visible from Pu'ukohala Heiau National Historic Site, Kawaihae Harbor and possible beaches to the south. However, these disruptions will be temporary during the cable installation period. The proposed project will not create any permanent structures above ground and therefore will not permanently adversely affect shoreline public views or the natural beauty of the beach.

Based on the above findings, it is determined that the request is consistent with the Shoreline Setback Law pursuant to Chapter 205A-46 and the criteria established in Rule No. 8 of the Planning Commission's Rules of Practice and Procedure, and thus should be approved by the Planning Commission.

Approval of this Shoreline Setback Variance request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all conditions of Special Management Area Minor Permit No. 09-000118.
3. The applicant shall publish public notice in the two newspapers in Hawai'i County as to the date and times when cable installation will begin and end and shall post such notice at Spencer Beach Park. The notice shall be published approximately one week prior to commencement of cable installation activities and shall run for seven consecutive days.

Mr. Jean-Paul Barral

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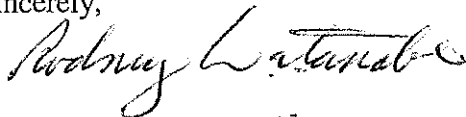
4. The applicant shall notify the Planning Department and County Department of Parks and Recreation one week prior to the commencement of cable installation activities.
5. The applicant shall implement best management practices to prevent sand sediment from eroding into nearshore waters and comply with Hawai'i County Code, Chapter 10, Erosion and Sedimentation Control as required by DPW.
6. Altered portions of the beach shall be restored to its original condition. Should the excavated sand become mixed with underground rubble, the sand shall either be cleaned or replaced with new sand material.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate 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 contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Rodney Watanabe, Chairman  
Leeward Planning Commission

Loptssv09-000004

cc: Ms. Denise Toombs  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
Office of Planning  
DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Zoning Inspector - Kona  
Mr. Gilbert Bailado ✓