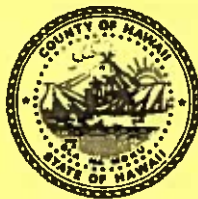


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

September 20, 2006

Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
P.O. Box 1101  
Kamuela, Hawaii 96743

Dear Mr. Mooers:

**Subject:** Special Management Area Use Permit Assessment Application  
No. 06-000188 (SAA 06-188)  
**Applicants:** Peter and Ellen Durst  
**Landowners:** Peter and Ellen Durst  
**Request:** Construction of a new single-family dwelling & related improvements  
**Location:** Keawaiki Beach Lots, Kahauloa 2<sup>nd</sup>, South Kona, Hawaii  
**Tax Map Key:** 8-3-005:006

---

This is in response to the subject application, which we received on August 22, 2006, to allow for the construction of a new single-family dwelling and related improvements on the subject property. Included with the application is a copy of the Notice of Acceptance of the applicant's Conservation District Use Application (CDUA) HA-2990. We further understand that the shoreline survey conducted by Wes Thomas Associates was submitted on June 20, 2006 to the Department of Land and Natural Resources (DLNR) for certification.

The subject 28,750-square foot lot is situated in the State Land Use Conservation district. Therefore, there is no County of Hawaii zoning designation applicable to the subject property. This shoreline parcel is also in the Special Management Area. A site inspection of the property was conducted on September 15, 2006 by Planning Department staff.

We understand that the proposed project includes the construction of a new single-family dwelling and related improvements that will be sited on approximately 3,500 square feet of the subject property. According to plans submitted with the application the proposed residence will consist of three detached structures, a 2,038-sq. ft. main house, an 832 sq. two-bedroom ft. guest house, and a 512 sq. ft. garage, all of which will be connected by a common roof. A "seat wall" is proposed along the mauka edge of the "blow hole" depression and within the shoreline setback area. We further note the retaining wall proposed for construction within proximity of the shoreline setback line on the south side of the building site.

The staff site inspection of the subject property mentioned above revealed the following observations:

1. The low sea cliff along the shoreline appears to be fragmented and rather fragile with signs of ongoing erosion. The extremely rough and fragmented surface, rather than smooth wear, of the cliff face and the high volume of rock rubble at the cliff base suggest that erosion of the sea cliff may occur in catastrophic events rather than in a gradual wearing down of rock surfaces by wave action.
2. The area immediately mauka of the "blow hole" appears to be eroding at a more accelerated rate than other areas of the sea cliff.
3. The shoreline stakes set along the "blow-hole" are well within the depression and an estimated 8-10 feet further seaward of the top of the mauka edge of the "blow hole."
4. An above-grade irrigation system has been placed within 40 feet of the shoreline without the prior written approval of the Planning Department.

Pursuant to Rule 9-4(10) B (i) of the Planning Commission Rules of Practice and Procedure (PC Rules), the construction of a single-family residence that is not part of a larger development, may be determined by the Planning Director to be exempt from the definition of "development" provided that the use, activity or operation being excluded does not have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area.

Pursuant to Rule 11-5, Planning Department Rules of Practice and Procedure (PD Rules), all lots which abut the shoreline shall have a minimum shoreline setback line of forty feet.

After reviewing the subject application and proposed addition to the existing single-family dwelling against the Criteria of Substantial Adverse Effect provided in Rule 9-10H, PC Rules, we have determined that the proposed project will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA provided the applicant complies with certain mitigative conditions.

Therefore, we have determined that the proposed construction of a new single-family dwelling and the related improvements, as proposed in the subject application, is exempt from the definition of "development" and shall not require any further review under the SMA guidelines.

This determination is granted subject to the applicant's compliance with the following conditions.

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The shoreline setback line shall be established at 40 feet from the shoreline, as surveyed by Wes Thomas Associates on the shoreline survey submitted to the DLNR for certification on June 20, 2006 or as certified by the Chair of the Board of Land and Natural Resources, whichever is the furthest inland, except that the shoreline setback line shall be not less than 50 feet from the mauka top of the "blow hole" depression between the abandoned stone stairway in the approximate center of the makai property line to the lot's southern property line.
3. The applicant shall erect a construction barrier meeting with the approval of the Planning Department along the entire length of Shoreline Setback Line. The construction barrier shall be erected prior to the commencement of any construction, clearing, grading or other land altering activities and shall remain in place until the Building Division has granted Final Approval for all Building Permits issued in connection with the subject project.
4. The applicant shall ensure that no construction activity, including but not limited to, the storage of construction materials, tools or equipment, or the placement of construction debris, occurs within the Shoreline Setback Area or makai of the shoreline.
5. The applicant shall immediately remove the above grade irrigation system that is located within the Shoreline Setback Area.
6. Any uses, activities or operations, including, but not limited to, clearing, grading, excavation, construction or placement of any man-made feature, or landscaping, within the shoreline setback area shall require the prior written approval of the Planning Department pursuant to Rule 11-8, Planning Department Rules of Practice and Procedure or the approval of a Shoreline Setback Variance by the Planning Commission.
7. The applicant shall not prohibit or restrict lateral public access along the shoreline or within the makai 10 feet of the Shoreline Setback Area without the prior written approval of the Planning Department.

Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
Page 4  
September 20, 2006

8. The Building Permit for the proposed dwelling shall be issued within one (1) year from the date of this letter.
9. 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 determination; and
  - 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 up to one additional year).
10. The Planning Director shall initiate procedures to revoke this determination should any of the conditions not be met or substantially complied with in a timely fashion.

Should you have questions, please feel welcome to contact Larry Brown or Esther Imamura of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

LMB:cd

P:\wpwin60\CZM\SM\AA\2006\SAA 06-188 Durst xmpt.doc

xc: Ms. Deborah Chang – Long Range Planning