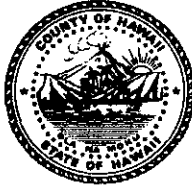


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
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**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
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Fax (808) 961-8742

November 2, 2011

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

Dear Mr. Mooers:

**SUBJECT: Special Management Area Use Permit Assessment Application  
(SAA 11-000721)**  
**Applicant: Steven C. Wilcox**  
**Land Owner: Barbara S. Wilcox Trust and Allen C. Wilcox Jr. GST  
Marital Trust**  
**Request: Renovate Existing Single-Family Dwelling**  
**Tax Map Key: (3) 8-3-005:012, Kahauloa 2<sup>nd</sup>, South Kona, Hawai'i**

This is to acknowledge receipt on October 12, 2011 of your Special Management Area Use Permit Assessment Application for the renovations to the existing dwelling and related improvements on the subject parcel. We also understand that the applicant has submitted a Conservation District Use Application to the Office of Conservation and Coastal Lands for this request.

The subject parcel consists of 21,600 square feet and is zoned Open by the County of Hawai'i. It is designated Conservation by the State Land Use Commission. The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Open. Although the parcel is in the Special Management Area (SMA), the proposed project will not occur in a "shoreline area" as defined by Chapter 205A-41, Hawai'i Revised Statutes (HRS).

On February 10, 2011, this office issued a determination of exemption from the definition of "development" and further review against the SMA rules and regulations for a detached addition to the existing single-family dwelling and related improvements. It

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appears that the plans have been revised but still include a proposed 1,730 square foot addition.

However, there has been a change in the grading and landscaping plans. The proposed graded pad and landscaped area has been revised from 7,140.07 square feet to 7,162 square feet and the landscaping plan proposes the removal of two existing Monkey Pod trees, partially within the shoreline setback area, previously proposed to remain. In light of the revised proposal, this determination shall serve as the revised and final SMA determination for the proposed project. Any further proposed development on the subject property will need to be reviewed against the SMA rules and regulations.

**Special Management Area Determination:**

According to Chapter 205A-22, HRS and Planning Commission Rule 9-4(e) (2) (A) relating to Special Management Area, "development" does not include "*Construction of a single-family residence that is not part of a larger development*". Therefore, we have determined that the revised renovations to the existing dwelling and related improvements are exempt from the definition of "development". Also, the proposed improvements will not have an adverse effect on the environment.

**Determination of Minor Structure and Activity within Shoreline Setback Area:**

On October 29, 2010, our office made a determination that the subject lot qualifies for the minimum shoreline setback line of twenty feet.

According to the site plan, the proposed detached addition will be sited close to the 20-foot certified shoreline area. Please note that no portion of the single-family dwelling, including roof eaves, patios, stairs, decks or other improvements will be allowed within the certified shoreline area. The proposal also includes the removal of the two Monkey Pod trees partially within the shoreline setback area. However, according to Planning Department Rules of Practice and Procedure, Rule 11-8, "*A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to an along the shoreline.*"

The proposed removal of two Monkey Pod trees would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline. Therefore a shoreline setback variance shall not be required.

While further review of the detached addition to the existing dwelling and related improvements against the Special Management Area rules and regulations will not be required, all other applicable Zoning and Building Code requirements must be satisfied. Additionally, this determination of exemption from the SMA definition of development is based on the site plan, as submitted, and is subject to 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 applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. A Conservation District Use Permit from the Board of Land and Natural Resources or other written approval from the Department of Land and Natural Resources Office of Conservation and Coastal Lands must be obtained for the construction of the addition to the single-family dwelling within one (1) year from the date of approval of this permit.
4. The Building Permit for the proposed addition shall be secured within two (2) years from the date of approval of the Conservation District Use Permit.
5. As required by PD Rule 11-8 (b), the proposed removal of the two Monkey Pod trees shall be completed within (1) year from the date of this determination of minor structure or activity within the Shoreline Setback Area.
6. A construction barrier, meeting with the approval of the Planning Director, shall be erected along the entire length of the 20-foot shoreline setback line and along the makai side of the Monkey Pod tree removal area prior to the commencement of construction activities and shall remain in place until final inspection has been granted for the addition.
7. The construction barrier must be shown and properly noted on the plans submitted with any permits required for any land altering or construction activities. The construction notes on the plans must include the following statement, "the construction (and/or erosion control) barrier must be erected prior to any land altering or construction activities, and must remain in place

until final inspection by Department of Public Works (or Planning Department).”

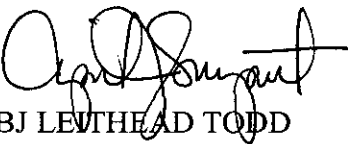
8. No land alteration, grubbing, landscaping, demolition or construction activities, including, but not limited to, the stockpiling of debris, construction materials or equipment, shall occur in the shoreline setback area without securing a prior written determination of minor structure or activity pursuant to Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.
9. The area makai of the 20-foot shoreline setback line shall be kept clear of any rubbish or debris resulting from the construction and tree removal activities at all times.
10. Landscaping and irrigation shall be contained and maintained within the property lines of the lot of origin, and shall under no circumstances extend seaward of the shoreline as depicted on the certified shoreline survey for the lot dated February 2, 2010.
11. Neither the landowner nor any agent of the landowner or its successors shall, at any time, impede or otherwise restrict lateral public shoreline access along the shoreline makai of the 20-foot shoreline setback line.
12. Artificial light from exterior lighting fixtures, including, but necessarily limited to floodlights, uplights or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to Chapter 205A-71(b), Hawai‘i Revised Statutes.
13. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigative measures are taken for the discovery; with written guidance from the State Historic Preservation Division of the Department of Land and Natural Resources.

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14. 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 of 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).
  
15. 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.

If you have questions or require further information, please feel free to contact Bethany Morrison of this office at 961-8138.

Sincerely,

  
BJ LEVTHEAD TODD  
Planning Director

BJM:cs  
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cc: Planning Department- Kona Office

Mr. Steven C. Wilcox  
77-6435 Kuakini Hwy  
Kailua Kona, HI 96740

Mr. Samuel J. Lemmo, Administrator