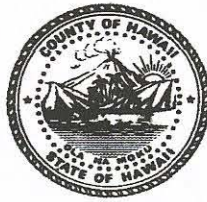


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Special Management Area Minor Permit No. 13-000269

Project: Continued Use of Privately Owned Beach Park and Retention of Certain As-Built Improvements Including a Rock Wall Along a Portion of the Southern Property Line, a Community Garden Area, Landscaping and Irrigation System, and Related Improvements

Applicant(s): The Bill Healy Foundation

Land Owner(s): B.P. Bishop Estate Trustees, Kamehameha Schools

Location: Kahauloa 1st, South Kona, Hawai'i

TMK: (3) 8-2-006:027 Land Area: 32,587 square feet

Applicant's Request

1. Project Description:

The applicant requests the continued use of the subject property as a privately owned beach park as well as the approval of as-built improvements including a rock wall, a community garden area, landscaping and irrigation system, signage, picnic tables and related improvements on the subject property. In addition, as a corrective action to an enforcement case with the Department of Land and Natural Resources Office of Conservation and Coastal Lands (DLNR OCCL), the applicant will remove all emplaced soil from an area 5 feet mauka of the DLNR-proposed shoreline. This will include naturalization of the shoreline by hand removal of the planters, stacked rock walls, and planted shrubbery on the subject property. Also, the applicant is currently working with an engineer on the final design of the as-built rock wall to comply with Chapter 27 of the Hawai'i County Code.

2. Purpose of Project:

As acknowledged by the applicant, the property is being used as a privately owned beach park. On March 11, 2011, a Japan-generated tsunami struck the Kealahou Bay area. The tsunami caused major damage. In response to the destruction of the subject park area, a group of volunteers undertook the restoration of the park improvements, including the reestablishment of the grass lawn and landscaping. This work was undertaken without securing the necessary permits/ approvals. The applicant is working to ensure compliance with applicable laws and regulations.

3. **Project Valuation:** \$25,000.

4. **Determination:**

According to Hawai'i Revised Statutes (HRS) Chapter 205A-22 and Planning Commission (PC) Rule No. 9-4 (e) (1) (A) and PC Rule 9-4 (e) (1) (B), "*Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste,*" and "*Grading, removing, dredging, mining, or extraction of any materials,*" are not exempt from the definition of "development." Therefore, the as-built improvements including a rock wall, a community garden area, landscaping and irrigation system, signage, and picnic tables will require a review against the SMA rules and regulations. In addition, the applicant's naturalization of the shoreline by hand removal of all emplaced soil, planters, stacked rock walls, and planted shrubbery requires a review against SMA rules and regulations.

State and County Plans

1. **State Land Use District:** The subject parcel is designated Urban by the State Land Use (SLU) Commission.
2. **General Plan:** The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation is Open.
3. **County Zoning:** The subject parcel is zoned RS-15 (Single-Family Residential) by the County of Hawai'i.
4. **Special Management Area (SMA):** The subject parcel is located entirely within the Special Management Area (SMA) with frontage along the shoreline.
5. **Flood Zone:** VE and AE.

Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- Development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.
- The proposed development is consistent with the Hawai'i County General Plan and the Zoning Code.
- The proposed development does not conflict with the following objectives of Chapter 205A, HRS, to:
 - Provide coastal recreational opportunities accessible to the public.

- Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
- Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
- Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
- Provide public or private facilities and improvements important to the State's economy in suitable locations.
- Reduce hazard to life and property from tsunamis, storm waves, stream flooding, erosion, subsidence and pollution.
- Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- Stimulate public awareness, education, and participation in coastal management.
- Protect beaches for public use and recreation.
- Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
 - Recreational Resources
 - Historic Resources
 - Scenic and Open Space Resources
 - Coastal Ecosystems
 - Economic Uses
 - Coastal Hazards
 - Managing Development
 - Public Participation
 - Beach Protection
 - Marine Resources
- The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

As discussed above, the proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

We commend the property owner for voluntarily providing access to the shoreline. In an effort to provide public access consistent with other County public access locations, the gate placed at the entrance shall remain open to the public from 6:00am to 8:00pm, as stated in the application. In addition, we will keep the provided hours of operation, restrictions on use, and signage on file in our office.

The estimated project cost of approximately \$25,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated April 22, 2013, states the following:

"We reviewed the subject application and our comments are as follows:

We have determined that the subject property is located within Flood Zones "VE and AE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). The above information is based on the most recent FIRM for the County of Hawai'i. The "As-Built" CRM wall the applicant wishes to maintain in place along the southerly property line is in the AE Zone and is an encroachment of obstruction, subject to the requirements of Chapter 27 of Hawai'i County Code. Certification by a licensed Civil Engineer is required in conformance to Section 27-18c (Encroachments).

We concur with Planning Directors HRS Chapter 343 Declaration of Exemption."

Pursuant to Planning Commission Rule 9-10(e), Special Management Area Minor Permit No. 13-000269 is hereby approved to allow the continued use of the subject property as a privately owned beach park as well as the approval of as-built improvements including a rock wall, a community garden area, landscaping and irrigation system, signage, picnic tables and related improvements on the subject property.

Conditions of Approval

The Planning Director has approved SMA Minor Permit No. 13-000269 subject to 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 certification, accepted by the Department of Public Works, for compliance with Chapter 27 of Hawai'i County Code shall be submitted to this department within **ninety (90) days** of the date of this permit. If the certification is not received within ninety (90) days, the applicant shall have thirty (30) days to completely remove the rock wall along a portion of the southern property line. Failure to remove the rock wall shall result in Penalties as provided for in PC Rule 9-17, Penalties.

4. Other than the approved as-built landscaping and irrigation improvements, no land alteration, grubbing, 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 PD Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.
 5. As required by PD Rule 11-8 (b), the work within the shoreline setback area shall be completed within one (1) year from the date of this determination of minor structure or activity within the Shoreline Setback Area.
 6. No wheel or track motorized heavy equipment shall be used in the shoreline setback area.
 7. Any portable toilet facility placed on the property shall not be allowed in the shoreline setback area and shall be maintained in good working condition by a company which is registered as a wastewater and wastewater sludge pumper and hauler with the State of Hawai'i Department of Health.
 8. Any further grading, grubbing, filling or other construction activity, including but not limited to, the construction of structures of any type shall require further review and approval as provided under Chapter 205A, HRS, and PC Rule 9. This includes the determination of the shoreline setback area.
 9. Within not more than 30 days from the approval of this permit, the applicant shall submit a public access plan for the approval of the Planning Director that will provide pedestrian public access to and along the shoreline on the subject property. A copy of our "What Should be Included in a Public Access Plan" guide is enclosed for your reference.
 10. The approved public access plan shall be memorialized in a Shoreline Public Access Agreement document recorded with Bureau of Conveyances.
 11. 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.
 12. 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.
 13. An extension of time for the performance of the conditions contained herein may be granted by the Planning Director upon the following circumstances:
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- 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 permit; 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).

14. Any deviation from the above conditions will automatically result in the termination of this approval and the applicant shall be responsible to restore the area to its original condition within 30 days of notice of termination by the Planning Director. Failure to abide by the notice of termination shall result in Penalties as provided for in PC Rule 9-17 and/or PD Rule 11-14, Penalties.

APPROVED:



DUANE KANUHA
Planning Director

JUN 12 2013

Date