

WILLIAM L. MOORE PLANNING, INC.

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PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 JAN 23 AM 8:36

January 22, 2014

Duane Kanuha, Director
Planning Department
101 Aupuni Street, Suite 3
Hilo, Hawaii 96720

Dear Mr. Kanuha:

Subject: The Bill Healy Foundation
SMA Minor Use Permit (SMM-13-000269)
TMK: (3) 8-2-006: 027
Manini Beach, Kahauloa 1st, South Kona Hawaii.

Special Management Area Minor (SMM) Use Permit No. 13-000269 was issued on May 30, 2013, to permit the Bill Healy Foundation (BHF) to continue the use of TMK: (3) 8-2-006: 027 (Parcel 027) as a privately owned and maintained beach park with related activities. Parcel 027 is held by the Bill Healy Foundation under a long term ground lease from the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, the fee owner of Parcel 027.

The SMM Use Permit was approved subject to certain conditions, including, among others, the preparation and approval of a Public Access Plan for Parcel 027 and the memorialization of the Plan in a Shoreline Public Access Agreement that is to be recorded in the Bureau of Conveyances of the State of Hawaii. The Public Access Plan, dated July 2103 was approved by the Planning Department on July 31, 2013.

The only remaining requirement of SMM 13-000269 is with respect to Condition 10 which states:

The approved public access plan shall be memorialized in a Shoreline Public Access Agreement document recorded with the Bureau of Conveyances.

The Bill Healy Foundation is requesting that SMM 13-000269 be amended to delete Condition 10 relating to recordation of a Shoreline Public Access Agreement in its entirety.

The beach park use approved by the SMM Use Permit and being implemented and funded by the BHF is not a permanent use for Parcel 027. The Foundation has a limited term lease with Kamehameha Schools for the use of the land. Upon completion of the lease terms, there is no guarantee that BHF or Kamehameha Schools will be able to continue operation of the park. Furthermore, should circumstances change, including funding restrictions or other unanticipated problems/issues, the BHF could terminate the park use at any time.



Planning Director
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Therefore, since the use of Parcel 027 as a beach park under the SMM Use Permit and the Public Access Plan is temporary in nature we do not believe there is a need for the recordation of a Shoreline Public Access Agreement in the Bureau of Conveyances, the effect of which recording is to create an all but permanent encumbrance against the fee title to Parcel 027 which may extend far beyond the temporary use being made of the Parcel by the Foundation.

This concern has been highlighted by the fee owner, Kamehameha Schools in a letter to the Planning Director dated January 16, 2014 (attached). As the fee owner, they have raised similar concerns and have requested that the BHF work with your office to seek an amendment of the conditions of approval of the SMM Use Permit to delete Condition 10 requiring that the Public Access Plan be memorialized in a Shoreline Public Access Agreement that is to be recorded in the Bureau of Conveyances.

In support of this request, we believe that SMM No. 13-000269 approval, which is specifically to allow the continuation of the privately maintained beach park, as well as the remaining conditions of approval provides the public with adequate assurances of public access as long as the park is in operation.

We appreciate your support in this request. Please feel free to contact me if you have any questions or require any further information on this matter.

Sincerely,



William L. Moore, President

XC: The Bill Healy Foundation
Allen Salavea, Kamehameha Schools



KAMEHAMEHA SCHOOLS

January 16, 2014

Duane Kanuha, Director
Planning Department
County of Hawaii
101 Aupuni Street, Suite 3
Hilo, Hawaii 96720

Dear Mr. Kanuha:

Subject: Healy Foundation SMA Minor Use Permit (SMM-13-000269)
TMK: (3) 8-2-006: 027
Manini Beach, Kahauloa 1st, South Kona Hawaii.

As you know, Special Management Area Minor (SMM) Use Permit No. 13-000269 was issued on May 30, 2013, to permit the Bill Healy Foundation to continue the use of TMK: (3) 8-2-006: 027 (Parcel 027) as a privately owned and maintained beach park with related activities. As you are also aware, Parcel 027 is held by the Bill Healy Foundation under a long term ground lease from the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, the fee owner of Parcel 027.

It is Trustees' understanding that the SMM Use Permit was approved subject to certain conditions, including, among others, the preparation and approval of a Public Access Plan for Parcel 027 and the memorialization of the Plan in a Shoreline Public Access Agreement that is to be recorded in the Bureau of Conveyances of the State of Hawaii.

The Trustees have reviewed the Public Access Plan prepared by the Bill Healy Foundation for Parcel 027 and have no objection to the commitments/requirements included in the Plan. However, as the fee owner of Parcel 027, the Trustees do have concerns regarding the requirement in the SMM Use Permit that the Public Access Plan be memorialized in a Shoreline Public Access Agreement that will be recorded in the Bureau of Conveyances.

The beach park use approved by the SMM Use Permit and being implemented and funded by the Bill Healy Foundation is not a permanent use for Parcel 027; in fact, such use can be terminated at any time during the lease term by the Foundation. And while the Trustees have no objections to the use of Parcel 027 as a beach park with public access, their approval of the beach park at this time is premised upon the care and maintenance of the park by the Bill Healy Foundation. The Trustees have not and cannot guarantee that the beach park use will continue for the remainder of the Foundation's lease term, or that the use will continue beyond the termination or expiration of the Foundation's lease.

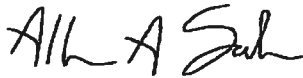
Duane Kanuha, Director
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Therefore, since the use of Parcel 027 as a beach park under the SMM Use Permit, the Public Access Plan and the Shoreline Public Access Agreement is temporary in nature, the Trustees do not believe there is a need to record the Shoreline Public Access Agreement in the Bureau of Conveyances, the effect of which recording is to create an all but permanent encumbrance against the fee title to Parcel 027 which may extend far beyond the temporary use being made of the Parcel by the Foundation.

Given the above, the Trustees have asked that the Bill Healy Foundation work with your office to seek an amendment of the conditions of approval of the SMM Use Permit to delete Condition 10 requiring that the Public Access Plan be memorialized in a Shoreline Public Access Agreement that is to be recorded in the Bureau of Conveyances. Alternatively, the Trustees have asked that the Foundation at least seek the deletion of the requirement that the Shoreline Public Access Agreement be recorded in the Bureau of Conveyances.

We appreciate your support in this request. Please feel free to contact me if you have any questions or require any further information on this matter.

Sincerely,



Allen Salavea
Land Planning & Entitlements Manager
Land Assets Division, Hawaii Island

XC: Cameron Healy, Bill Healy Foundation
Bill Moore, William L. Moore Planning, Inc.
Thomas Kaeo Duarte, KS LAD HI
Perry Kealoha, KS LAD HI
Dana Sato, KS Legal Department
KS Central Files
LAD HI Kona Files