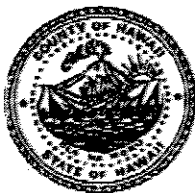


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-3288 • Fax (808) 961-8742

June 23, 2005

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

Dear Mr. Mooers:

**Subject: Special Management Area Assessment Application No. 05-000042
(SMAA 05-42)**

Applicant: Jonathan Cohen, Managing Member Aloha Properties, LLC

Land Owners: Aloha Properties, LLC

Project: Construction of a single-family dwelling & related improvements

Tax Map Key: (3) 5-7-01:005

This is in response to the subject SMAA application, which you submitted on behalf of the applicant on May 17, 2005. The application includes a completed SMAA application form and copies of the Draft Environmental Assessment (DEA) and the Conservation District Use Application (CDUA) prepared for the proposed project.

After careful review of the subject application and our findings, which are presented below, we have determined that the construction of the proposed single-family dwelling and related improvements, as specified in this letter, are exempt from the definition of "development" as provided under Rule 9-4(10)B(i) of the Planning Commission Rules of Practice and Procedure (PC Rules). This determination of exemption is granted with conditions, which are also provided later in this letter.

The subject shorefront lot is approximately 10.61 acres in area and is primarily situated in the State Land Use Conservation district. An approximately 13,500-square foot (sf) triangular shaped portion of the southeast corner of the property is zone Agricultural (A-5a) by the County of Hawaii.

We understand the proposed improvements to include:

1. The construction of a single-family residence within a compound of detached structures totaling 3,750 sf and another 878 sf of pools and decks;

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2. The construction of "agricultural building" that includes a diesel generator room, utility controls & battery bank room and a storage loft within the A-5 zoned portion of the property. However, the applicant's CDUA and DEA make no mention of any agricultural uses for the property;
3. Related improvements indicated on the amended site plan submitted on June 6, 2005 include a 16' water tank, a propane storage area, septic tank and leach field, rock walls, landscaping, improved dirt road and gravel driveway.

A site inspection of the subject property was conducted by staff planner Larry Brown on June 1, 2005. From that site inspection the following observations were noted:

1. Some of the proposed improvements, namely Zoe's Room and the northwest portion of the rock wall enclosed terrace and round "Open Terrace" are situated within 2 feet of the 40-foot shoreline setback line;
2. Additional beach erosion appears, in the form of a mauka indentation of the vegetation line, to have occurred to the southwest of Zoe's Room within 55' of the southwest corner of the stonewall archeological site north of Zoe's Room. This suggests the possibility that Zoe's Room may be within 7-10 feet of the shoreline.

We noticed that significant mauka movement of the shoreline abutting the proposed building site is indicated by the May 8, 2001 and December 4, 2004 certified shoreline surveys. Rule 11 of the Planning Department Rules of Practice and Procedure deals with activities and structures within shoreline setback area. §11-4(c) provides that shoreline setback lines shall be conservatively, but reasonably established. Pursuant to §11-5(a), "*all lots which abut the shoreline shall have a minimum shoreline setback line of forty feet.*"

Based on the above, this determination of exemption from the definition of "development" is granted for the improvements, uses, and activities specified above with modifications as necessary to ensure compliance with the following conditions:

1. The applicant shall erect a construction barrier meeting with Planning Department approval along the length of the 40-foot setback line. The construction barrier shall remain in place until final inspection for all building and land alteration permits has been secured.
2. The following improvements, uses and/or activities are prohibited within 40' shoreline setback area without first securing a written determination regarding the permissibility of the proposed improvement, use or activity under Rule 9, PC Rules and Rule 11, PD Rules from the Planning Department:
 - a. Storage of construction materials, tools, equipment or supplies;
 - b. Land alteration (including grading filling, excavation or mechanized grubbing);
 - c. Landscaping;

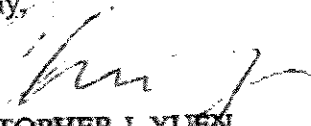
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- d. Construction activities;
 - e. Fence erection; or
 - f. Rock wall construction or repair.
3. Prior to the issuance of any land alteration or building permits for the subject property, the applicant shall provide the Planning Department with a copy of a CDUA approved by the Land Commission.
 4. All proposed improvements, except for landscaping, including structures and rock walls, shall be situated not closer than 50 feet from the December 4, 2004 certified shoreline.
 5. The detached element identified as Zoe's Room on the site plan shall be relocated so that it shall be not closer than 50 feet from the December 4, 2004 certified shoreline and not closer than 40 feet from any vegetation line.
 6. Applicant shall secure the necessary building & land alteration permits for the proposed improvements within 6 months of approval of the CDUA or this SMAA, whichever occurs later, and secure final inspection within 2 years of issuance of the building permits.
 7. Public access shall conform to the representations made in the Conservation District Use Permit Application.
 8. The applicant shall comply with all applicable laws, rules and regulations of all affected federal, state and county agencies.
 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 permit; 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. Failure to comply with any of these conditions shall result in the revocation of this determination of exemption.

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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

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cc: Ms. Susan Gagorik - Long Range

DLNR-OCCL
P.O. Box 621
Honolulu, HI 96809