

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

May 18, 2011

CERTIFIED MAIL - #7008 0500 0002 0444 6495

Ms. Karen Chun, Project Manager
Technical Design Services Office
Design Branch, Highways Division
Department of Transportation
969 Punchbowl Street
Honolulu, Hawaii 96813-5097

Dear Ms. Chun:

SUBJECT: APPLICATION FOR A SPECIAL MANAGEMENT AREA (SMA) USE PERMIT AND SHORELINE SETBACK VARIANCE (SSV) FOR THE PROPOSED HONOAPI'LANI HIGHWAY SHORELINE PROTECTION, AT OLOWALU, ISLAND OF MAUI, HAWAII; TMK: (2) 4-8-003:006 (POR.) (SM1 2009/0005) (SSV 2009/0001)

At the regular meeting on April 26, 2011, the Maui Planning Commission (Commission) reviewed the above applications, accepted testimony and exhibits, and after due deliberation, made the five determinations listed in the Recommendation report prepared by the Department of Planning (Department) for the April 26, 2011 meeting, and hereby orders approval of said Shoreline Setback Variance application, subject to the following conditions.

1. To maintain and require safe lateral access to and along the shoreline for public use.
2. To minimize risk of adverse impacts on beach processes.
3. To minimize risk of structures failing and becoming loose rocks or rubble on public property.
4. To minimize adverse impacts on public views to, from, and along the shoreline. For purposes of this section only, "adversely impacts public views" means the adverse impact on public views and open space resources caused by new building structures exceeding a one-story or thirty-foot height limitation.
5. To comply with Chapters 19.62 and 20.08, Maui County Code, relating to flood hazard districts and erosion and sedimentation control respectively.

The Commission also and hereby orders approval of said SMA Use Permit with the following conditions:

STANDARD CONDITIONS:

1. That construction of the proposed project shall be initiated by May 31, 2014. Initiation of construction shall be determined as construction of onsite and/or offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply within this three (3) year period will automatically terminate this SMA Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said three (3) year period. A time extension shall be in accordance with the provisions of Section 12-202-17 of the SMA Rules for the Commission.
2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete construction of this project within this time period will require unfinished portions of the project to obtain a new SMA Permit. A time extension shall be requested no later than ninety (90) days prior to the completion deadline. A time extension shall be in accordance with the provisions of Section 12-202-17 of the SMA Rules for the Commission.
3. The permit holder or any aggrieved person may appeal to the Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
4. That final construction shall be in substantial compliance with the Boulder Fill Plan, Drainline Section, End and Typical Sections included in the Final Environmental Assessment, Proposed Honoapiilani Highway Shoreline Protection, Olowalu, Maui, dated July, 2010.
5. That appropriate measures shall be taken during construction to mitigate the short term impacts of the project relative to dust and soil erosion from wind and water, ambient noise levels, and traffic disruptions.
6. That the subject SMA Use Permit shall not be transferred without prior written approval in accordance with Section 12-202-17(d) of the SMA Rules of the Commission. However, in the event that a contested case hearing preceded issuance of said SMA Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
7. That full compliance with all applicable governmental requirements shall be rendered.
8. That the Applicant shall submit plans regarding the location of any construction related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Department for review and approval.

9. That the applicant shall submit to the Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject SMA Use Permit. A preliminary report shall be reviewed and approved by the Department prior to the commencement of work on the site. A final compliance report shall be submitted to the Department for review and approval prior to the State's acceptance or completion of the work.
10. That the Applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the SMA Use Permit. Failure to so develop the property may result in the revocation of the permit.

PROJECT SPECIFIC CONDITIONS:

11. That the Applicant shall obtain permits from the United States Army Corps of Engineers (Corps), pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, as well as a Section 401 Water Quality Certification, as applicable. The Applicant shall provide copies of the applications, approvals, and all correspondence to date with the Preliminary Compliance Report. Any subsequent correspondence or reports shall be included in the final compliance report.

Department of Health

12. That, to the satisfaction of the Clean Water Branch of the Department of Health, the Applicant shall coordinate with the Clean Water Branch to address applicable National Pollutant Discharge Elimination System (NPDES) permit requirements for the project, if required, including the submittal of a Notice of Intent (NOI) for general permit coverage. Evidence of compliance with this condition shall be submitted with the Preliminary Compliance Report.
13. That the Applicant shall obtain permits from the Clean Water Branch of the Department of Health pursuant to Section 401 Water Quality Certification. The Applicant shall provide copies of the applications, approvals, and all correspondence with the Preliminary Compliance Report. Any subsequent correspondence or reports shall be included in the final compliance report.

Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD)

14. That, to the satisfaction of the DLNR-SHPD, a qualified archaeological monitor shall be present during those portions of the project which involve ground altering disturbance in order to document any historic properties which may be encountered and to provide mitigation measures as necessary. Please note that ground altering disturbance includes previously disturbed stratigraphy, as culturally significant subsurface deposits are often found in these contexts. As per Hawaii Administrative Rules (HAR), Section 13-279, prior to the commencement of ground altering disturbance associated with the proposed project, the project developer or developer's agent must submit an appropriately prepared monitoring plan to DLNR-SHPD for review and acceptance. Evidence of compliance with this condition shall be submitted with the Preliminary Compliance Report.

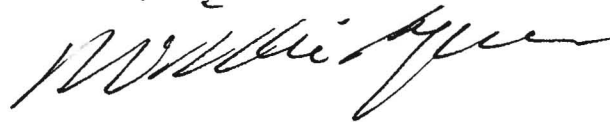
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The conditions of this SMA Use Permit shall be enforced pursuant Section 12-202 et seq. of the *Special Management Area Rules for the Maui Planning Commission*.

Further, the Commission adopted the Report and Recommendation prepared by the Department for the April 26, 2011 meeting, as the Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto and made a part hereof. Parties to proceedings before the Commission may obtain Judicial Review of Decision and Orders, issued by the Commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes.

Thank you for your cooperation. If additional clarification is required, please contact Current Planning Supervisor Jeffrey Dack at jeffrey.dack@mauicounty.gov or at (808) 270-6275.

Sincerely,



WILLIAM SPENCE
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, PE, Planning Program Administrator (2)
John F. Summers, Planning Program Administrator
Jeffrey P. Dack, AICP, Current Planning Supervisor
Tara Miller Owens, UH Sea Grant Extension Agent
Department of Public Works
Department of Fire and Public Safety
Police Department
Civil Defense
Natural Resources Conservation Service-USDA, Maui
U.S. Army Corp. of Engineers
U.S. Fish and Wildlife Service
Department of Accounting and General Services
Department of Education
Department of Hawaiian Homelands
Department of Health, Clean Water Branch
Department of Health, Maui District Health Office
Department of Health, Office of Environmental Quality Control
Department of Land and Natural Resources-Office of Conservation and Coastal Land
Department of Land and Natural Resources-State Historic Preservation Division
Maui Electric Company
Karlynn Kawahara, Munekiyo & Hiraga, Inc.
Office of Hawaiian Affairs
CZM File (SM1/SSV)
Project File
General File

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