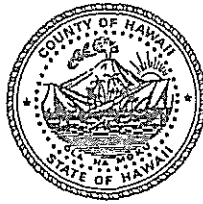


Harry Kim
Mayor



Susan
Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

Handwritten signature

June 14 2005

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

Dear Mr. Mooers:

**SUBJECT: Special Management Area Use Permit Assessment Application (SMAA 05-31)
Special Management Area Minor Permit No. 05-00004 (SMM No. 05-00004)
Applicant: Hermann P. Fernandez and David Coddington
Request: Consolidation and Resubdivision of Four (4) Lots into Four (4) Lots
Tax Map Key: 5-4-8:36 & 45, Honomakau, North Kohala, Hawaii**

This is to follow up on our May 10, 2005 letter relating to the above-referenced Special Management Area Use Permit Assessment for the consolidation and resubdivision of four (4) lots into four (4) lots on the subject parcels.

These parcels are zoned Agricultural (A-20a) by the County. The State Land Use Commission has designated Parcel 36 as Agricultural and Conservation while Parcel 45 is designated Agricultural.

By letter dated April 11, 2005, the Planning Director determined that the subject properties consisted of four (4) separate legal lots of record. Although the consolidation and resubdivision of four lots into four lots is not considered development, Planning Commission Rule 9-4(10)D, relating to Special Management Area states that *"Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as "development" for the purpose of this rule.*

Mr. Gregory R. Mooers
Page 2
June 14, 2005

The requirement to provide a lateral pedestrian public access easement as a condition of final subdivision approval is considered "development". However, the proposed consolidation and resubdivision will not exceed \$125,000 in valuation and will not have a significant adverse impact to coastal resources. Therefore, pursuant to Planning Commission Rule 9-10(E), Special Management Area Minor Permit No. 05-00004 is hereby issued to allow for the consolidation and resubdivision of four (4) lots into four (4) lots, subject to the applicant's compliance with the conditions of approval as specified in the permit.

Please note, however, that if any associated construction activity is required prior to final subdivision approval, a completed SMA Assessment Application with current information must be submitted for review.

Should you have questions, please feel free to contact Esther Imamura or Larry Brown of this department at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

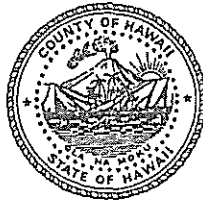
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Enclosures - SMM No. 05-00004
Department of Public Works May 23, 2005 Memo

xc w/encls: Long Range Planning - Ms. Susan Gagorik
Planning Commission

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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(808) 961-8288 • Fax (808) 961-8742

Special Management Area Minor Permit No. 05-00004

Project: Consolidation and Resubdivision of Four (4) Lots into Four (4) Lots
Applicant: Hermann P. Fernandez and David Coddington
Land Owner: Hermann P. Fernandez and David & Tracy Coddington
Location: Honomakau, North Kohala, Hawaii
TMK: 5-4-008:036 - 33.954 acres 5-4-008:045 - 31.771 acres

Applicant's Request

1. Project Description:

It was previously determined that there are four pre-existing lots of record on the subject parcels. The applicant proposes to consolidate and resubdivide these four (4) pre-existing lots of record into four (4) lots.

2. Purpose of Project:

The project is intended to create four newly configured lots. Three of the lots will have ocean frontage.

3. Project Valuation: None

4. Determination:

According to Chapter 205A-22, HRS and Planning Commission Rule 9-4(10)A(iii) relating to the Special Management Area, "development" includes "*Change in the density or intensity of use of land, including but not limited to the division or subdivision of land*". The density or intensity of the use of land will increase because it may have a significant environmental or ecological effect by increasing the number of ocean frontage lots and creating lots in an area which may be subject to coastal hazards such as unstable cliffs.

Further, according to Planning Commission Rule No. 9-4(10)(D), "*Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as 'development' for the purpose of this rule*". A lateral public access easement, meeting with the approval of the Planning Director, will be required as a condition of final subdivision

approval. This use will have a cumulative impact and ecological effect on the parcels.

Based on the foregoing, the proposed four-lot subdivision requires a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** Parcel 36 is designated Agricultural and Conservation by the State Land Use Commission. Parcel 45 is designated Agricultural.
2. **General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates Parcel 36 as Important Ag. Lands and Open. Parcel 45 is designated Important Ag. Lands.
3. **County Zoning:** Both parcels are zoned Agricultural (A-20a).
4. **Special Management Area (SMA):** Portions of both parcels are located in the SMA.

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 Hawaii 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 tsunami, 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 Hawaii County General Plan and Zoning Code.

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

There is no project cost for the consolidation and resubdivision.

By memorandum dated May 23, 2005, the Department of Public Works – Engineering Division submitted the following comments regarding the subject application:

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

1. *Flood Zones "VE and A" affect the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 16, 1988. Any new construction or substantial improvements within the flood zones will be subject to the requirements of Chapter 27 – Flood Control, of the Hawaii County Code.*
2. *All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.*
3. *The applicant should consult with the Natural Resources Conservation Service, formerly known as Soil Conservation Service.*
4. *The applicant shall comply with chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity."*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 05-00004** is hereby approved to allow for the consolidation and resubdivision of four (4) lots into four (4) lots, subject to the applicant's compliance with the conditions of approval as specified below.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 05-00004** 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 applicants shall develop a public access plan for the subject properties that provides, at a minimum, a continuous lateral traversable public access easement. This public access plan shall be submitted to the Planning Director for approval not more than one year after the granting of this permit. Approval of the public access plan shall be required prior to granting of final approval of the proposed subdivision.
3. In the absence of a certified shoreline survey, the top of the pali shall be regarded as the shoreline.
4. The applicant shall comply with all applicable requirements of other affected agencies.
5. Future development of the proposed lots shall be subject to review against the SMA guidelines as such plans are implemented.
6. 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 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).
7. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

APPROVED:



CHRISTOPHER J. YUEN
Planning Director

6/14/05

Date

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII


DATE: May 23, 2005

PLANNING DEPARTMENT
County Of Hawaii
75-5706 Kuakini Hwy. #10
Kailua-Kona HI 96740

Memorandum

RECEIVED MAY 24 2005

TO : Christopher J. Yuen, Planning Director
Planning Department

FROM : Galen M. Kuba, Division Chief 
Engineering Division

SUBJECT : SMA Use Permit Assessment Application (SMAA 05-031)
Applicant: Hermann P. Fernandez and David Coddington
Location: Honomakau, N. Kohala
TMK: 3 / 5-4-008: 036 & 045

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

1. Flood Zones "VE and A", affect the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 16, 1988. Any new construction or substantial improvements within the flood zones will be subject to the requirements of Chapter 27 - Flood Control, of the Hawaii County Code.
2. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
3. The applicant should consult with the Natural Resources Conservation Service, formerly known as, Soil Conservation Service).
4. The applicant shall comply with chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.

KE

copy: ENG-HILO/KONA
PLNG-KONA

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