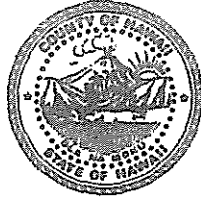


Harry Kim  
for



**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

**Christopher J. Yuen**  
Director

**Brad Kurokawa, ASLA**  
**LEED® AP**  
Deputy Director

April 14, 2008

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 (SAA 07-000270)**  
**Special Management Area Minor Permit No. 08-000077**  
**Applicant: Gregory R. Mooers**  
**Land Owner: LLC Kawala**  
**Request: Consolidation and Resubdivision of Twelve (12) Lots into Twelve (12) Lots**  
**TMK: 9-5-10:1, Kawala, Kau, Hawaii**

This is to follow up on our July 20, 2007 letter relating to the above-referenced Special Management Area Use Permit Assessment for the consolidation and resubdivision of twelve (12) lots into twelve (12) lots. We apologize for the lateness of this response.

These pre-existing lots of record are zoned Agricultural (A-20a) by the County. They are located within the State Land Use Commission's Urban, Agricultural and Conservation areas.

The proposed consolidation and resubdivision will result in only one lot containing all of the SMA area. No improvements are proposed within the SMA.

Although the consolidation and resubdivision of twelve (12) lots into twelve (12) 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."*

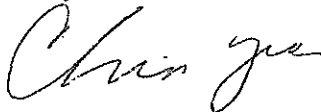
Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
Page 2  
April 14, 2008

The requirement to provide a public vehicular mauka-makai and public lateral shoreline pedestrian access easement as a condition of final subdivision approval is considered "development". Further, it is anticipated that the cost of any required infrastructural improvements 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. 08-000077 is hereby issued to allow for the consolidation and resubdivision of twelve (12) lots into twelve (12) lots, subject to the applicant's compliance with the conditions of approval as specified in the permit.

Please note, however, that issuance of SMM 08-000077 does not imply tacit approval of the proposed consolidation and resubdivision project. All applicable Zoning and Subdivision Code requirements must also be satisfied.

Should you have questions, please feel free to contact Esther Imamura of this department at 961-8288, extension 257.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

ETI:mad

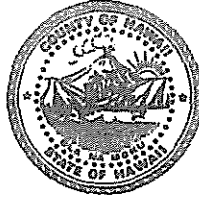
P:\wpwin60\CZM\SMM\2008\SMM 08-77L Mooers LLC Kawala.rtf

Encl: SMM No. 08-000077

xc w/encl: Mr. Samuel J. Lemmo, Administrator, DLNR, OCCL  
Long Range Planning Division  
Mr. Norman Hayashi, Planning Commission  
Mr. Daryn Arai, Ministerial Division

xc ltr only: Mr. Abbey S. Mayer  
Interim Director  
State of Hawaii, Office of Planning  
Department of Business, Economic Development & Tourism  
P O Box 2359  
Honolulu, Hawaii 96804  
(SMM 08-000077 will be emailed with the semi-monthly report)

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

**Special Management Area Minor Permit No. 08-000077**

**Project:** Consolidation and Resubdivision of Twelve (12) Lots into Twelve (12) Lots  
**Applicant:** Gregory R. Mooers  
**Land Owner:** LLC Kawala  
**Location:** Kawala, Kau, Hawaii  
**TMK:** 9-5-10:1 **Land Area:** 1044.245 acres

**Applicant's Request**

**1. Project Description:**

The applicant proposes to consolidate twelve (12) pre-existing lots of record and resubdivide into twelve (12) lots. The proposed reconfiguration does not subdivide any property within the Special Management Area (SMA). Proposed Lot 10, consisting of 162.459 acres, will contain all of the SMA area. No associated construction improvements are proposed within the SMA.

**2. Purpose of Project:**

The applicant proposes to have more regularly shaped lots. The SMA area will be contained within one lot.

**3. Project Valuation:** None, according to the applicant. However, the requirement to provide public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, may require some infrastructural improvements, but anticipated to be less than \$125,000.

**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*".

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 public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, meeting with the approval of the Planning Director, will be required prior to the granting of final consolidation and resubdivision approval. The pedestrian public access easement shall be not less than 10 feet in width and extend from the property's northeastern to southeastern property lines.

The public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, will have a cumulative impact and ecological effect on the parcels. Therefore, the proposed consolidation and resubdivision of these lots requires a SMA Minor Permit.

#### **State and County Plans**

1. **State Land Use District:** These pre-existing lots of record are located within the Urban, Agricultural and Conservation districts.
2. **General Plan:** These pre-existing lots are in areas designated Low Density Urban, Urban Expansion, Extensive Agriculture, Important Agricultural Land and Open by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** These lots are zoned Agricultural (A-20a).
4. **Special Management Area (SMA):** All of the SMA area will be contained entirely within one proposed lot.
5. **Flood Zone:** Zone X.

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

Public access imposed to enhance access to shoreline for recreational purposes. There are existing unimproved jeep trails that currently provide public access to the shoreline.

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 205-A, 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 ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. In that only one of the lots will contain the SMA area, we have determined that the proposed consolidation and resubdivision of these lots will not have a substantial adverse effect on the environment.

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.

Although there is no project cost for the consolidation and resubdivision of the twelve (12) lots, the requirement to provide public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, may require some infrastructural improvements.

By memorandum dated August 6, 2007, the Department of Public Works – Engineering Division had the following comments regarding the subject application:

*"We reviewed the subject application for compliance with Chapter 27, Flood Control, forwarded by your memo dated July 20, 2007 and have no objections to the request.*

*The subject parcel is in an area designated as Zone X on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Zone X is an area determined to be outside the 500-year floodplain (may include areas with unknown flood or drainage hazards).*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 08-000077** is hereby approved to allow for the consolidation and resubdivision of twelve (12) lots into twelve (12), subject to the applicant's compliance with the conditions of approval as specified below.

### Conditions of Approval

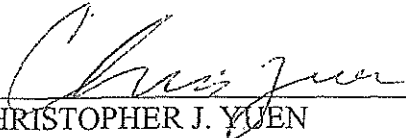
The Planning Director has approved **SMA Minor Permit No. 08-000077** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of other affected Federal, State and County agencies.

3. The applicant shall develop a public access plan that provides, at a minimum, continuous traversable vehicular mauka-makai and a minimum 10-foot wide lateral shoreline pedestrian access along the existing coastal jeep trail or as otherwise mutually agreed upon. Included but not limited to, this plan shall address location, construction, parking, width, hours, signage, maintenance responsibilities, etc. This 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 consolidation and resubdivision. These access easements shall be delineated on the final plat map.
4. Applicant shall submit a written estimate(s) provided by a contractor(s) licensed to do business in the State of Hawaii for all construction activities required prior to the granting of final consolidation and resubdivision approval to confirm that the total project valuation (exclusive of land costs) is not in excess of \$125,000. In the event the total valuation of the proposed consolidation and resubdivision does exceed \$125,000, this Special Management Area Minor Permit shall be deemed null and void and the applicant shall be required to secure approval of a Special Management Area (Major) Use Permit from the Planning Commission.
5. Final consolidation and resubdivision approval shall be secured within two (2) years from the date of approval of this permit.
6. Any further subdivision or consolidation and resubdivision of the lots resulting from the proposed 12-lot consolidation and resubdivision shall constitute a cumulative impact on the SMA and require a Special Management Area (Major) Use Permit.
7. All site plans submitted to the Planning Department for any future land use permits or development on the applicable resultant lots shall include the location of the public vehicular mauka-makai and public lateral shoreline pedestrian access easements, including public parking.
8. Future development of the proposed lots shall be subject to review against the SMA guidelines as such plans are implemented.
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 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).

10. 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

APR 14 2008

\_\_\_\_\_  
Date