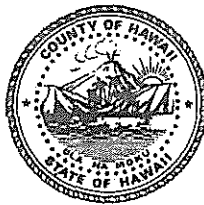


William Kenoi
Mayor



A. L. C. C.
Daryn S. Arai
Acting Planning Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

December 10, 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 08-353)
Special Management Area Minor Permit No. 08-000093
Applicant: Surety Kohala Corporation
Land Owner: Surety Kohala Corporation; EWM Investments, LLC; Ainakea Makai, LLC
Request: Consolidation and Resubdivision of Eight (8) Lots into Eight Lots
Tax Map Key: 5-3-6:21; 5-4-5:35; 5-4-9:10, 21-23 & 27; and
Portions of TMK: 5-4-9:4, 16-17 & 24, North Kohala, Hawaii

This is to follow up on our August 20, 2008 letter regarding the above-referenced Special Management Area Use Permit Assessment for the consolidation and resubdivision of eight (8) lots into eight (8) lots.

TMK: 5-3-6:21 is the only lot that is partially in the Special Management Area and the State Land Use Conservation District. The County zoning is Agricultural (A-20a), the State Land Use designation is Agricultural and Conservation and the General Plan designation is Low Density Urban, Important Agricultural Lands and Open.

Since TMK: 5-3-6:21 was previously subdivided, the consolidation and resubdivision of these eight (8) lots into eight (8) lots does not qualify as exempt from the definition of "development". Further, 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

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
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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."

The requirement to provide public shoreline pedestrian accesses will have a cumulative impact and ecological effect on the parcels. This requirement, included as a condition of final consolidation and resubdivision approval, is considered "development". However, it is anticipated that the cost of infrastructural improvements, if required, will not exceed \$125,000 in valuation and will not have a significant adverse impact to coastal resources."

In addition, since there will be no development within the SMA portion of the two proposed lots, the requirement of a current certified shoreline survey is waived. Further, any future development of these two proposed lots will be subject to review against the SMA guidelines as such plans are implemented.

Therefore, pursuant to Planning Commission Rule 9-10(E), Special Management Area Minor Permit No. 08-000093 is hereby issued to allow for the consolidation and resubdivision of eight (8) lots into eight (8) lots, subject to the applicant's compliance with the conditions of approval as specified in the permit.

Please note, however, that issuance of SMM 08-000093 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.

Sincerely,



DARYN S. ARAI
Acting Planning Director

ETI:
Wpwin60/CZM/SMM/2008/SMM 08-93L/Mooers Surety Kohala

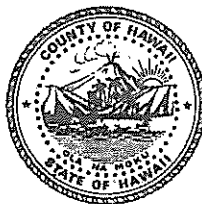
Enclosures - SMM No. 08-000093
Department of Public Works August 29, 2008 Memo

Mr. Gregory R. Mooers
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xc w/encls: Long Range Planning
Mr. Norman Hayashi, Planning Commission

Mr. Abbey S. Mayer, Director
State of Hawaii, Office of Planning
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, HI 96804

Steven S.C. Lim
Carlsmith Ball LLP
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County of Hawaii

PLANNING DEPARTMENT

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Special Management Area Minor Permit No. 08-000093

Project: Consolidation and Resubdivision of Eight (8) Lots into Eight (8) Lots
Applicant: Surety Kohala Corporation
Land Owner: Surety Kohala Corporation; EWM Investments, LLC; Ainakea Makai, LLC
Location: North Kohala, Hawaii
TMK: 5-3-6:21; 5-4-5:35; 5-4-9:10, 21-23 & 27; and Portions of TMK: 5-4-9:4, 16-17 & 24

Applicant's Request

1. Project Description:

The owners are proposing to consolidate eight contiguous lots and resubdivide into eight lots. However, TMK: 5-4-9:24 was previously subdivided (SUB 05-000245) on November 15, 2006 and, therefore, not part of this subdivision action. Further, although TMK: 5-4-9:4, 16 and 17 were reconfigured by deed, there was no subsequent consolidation and resubdivision to reflect the new metes and bounds descriptions. These owners are now preparing to submit an application for this consolidation and resubdivision action.

Of the eight lots, only a portion of TMK: 5-3-6:21 is within the Special Management Area (SMA). This parcel has frontage along the coastline and the proposed consolidation/resubdivision will result in two parcels fronting the coastline. No construction activity is proposed within the SMA.

2. Purpose of Project:

The irregular configuration of the lots precludes the ease of use by the owners and others.

3. Project Valuation:

None, according to the applicant. However, the requirement to provide public lateral shoreline pedestrian access may require some infrastructural improvements anticipated to cost less than \$125,000.

4. Determination:

Planning Commission Rule 9-4(10)B(xiii) states that "*Subdivision of a parcel of land into four or fewer parcels when no associate construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with*

respect to any subsequent subdivision of any of the resulting parcels". Since TMK: 5-3-6:21 was previously subdivided, it does not qualify as exempt from "Development".

Chapter 205A-22, HRS and Planning Commission Rule 9-4(10)A(iii) relating to the Special Management Area, states that "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 plan for public lateral shoreline pedestrian access easements will be required prior to final consolidation and resubdivision approval. These public lateral shoreline pedestrian accesses will have a cumulative impact and ecological effect on the parcels. Therefore, the proposed consolidation and resubdivision of these eight (8) lots requires a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** See table below.
2. **General Plan:** See table below.
3. **County Zoning:** See table below.

TAX MAP KEY NUMBER	ACREAGE	STATE LAND USE	GENERAL PLAN	COUNTY ZONING
5-3-6:21	334.913	Agricultural/ Conservation	LDU/IAL/OPEN	A-20a
5-4-5:35	0.396	Urban	LDU	RS-15
5-4-9:10	21.652	Agricultural	IAL/LDU	A-20a
5-4-9:21	1.597	Agricultural	LDU	A-20a
5-4-9:22	1.16	Agricultural	LDU	A-20a
5-4-9:23	5.584	Agricultural	IAL/LDU	A-20a
5-4-9:27	94.767	Agricultural	IAL/LDU	A-20a
5-4-9:Por. of 4	10.814	Agricultural	LDU/IAL	A-20a
5-4-9:Por. of 16	36.611	Agricultural	IAL/LDU	A-20a
5-4-9:Por. of 17	12.118	Agricultural	IAL	A-20a
5-4-9:Por. of 24	16.125	Agricultural	IAL	A-20a

IAL: Important Agricultural Lands

LDU: Low Density Urban

4. Special Management Area (SMA):

Only a portion of TMK: 5-3-6:21 is within the SMA. No construction activity is proposed in the SMA.

5. Flood Zone:

According to the Flood Insurance Rate Map (FIRM), portions of the subject properties are located within Flood Zone "A and VE" Special Flood Hazard Areas.

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

Public access will be imposed to enhance access to the shoreline for recreational purposes. There are unimproved trails and roads along the shoreline and down and across Kapaau Gulch that are presently used by the public. These trails and roads will not be impacted by the subdivision action and public pedestrian access will be depicted on the final subdivision map.

The applicant will be required to develop and implement a public access plan for TMK: 5-3-6:21 that will provide a continuous traversable public lateral shoreline pedestrian access easement along the shoreline. Development of the subject property should allow for a mauka relocation of the lateral easements in the event of erosion or other conditions that make the easements unsafe.

The public pedestrian access required by SUB 7776 shall continue on TMK: 5-3-6:21 along the old field road mauka and parallel to the top of the cliff and into Kapaau Gulch.

This gulch is pretty steep. There are ropes that people use to access the fishing area on the point. In the future, if a governmental entity wants to construct a trail into the gulch, the owner will be required to grant an easement for that future trail alignment.

There is a way to get across the gulch by going along the top of the bank mauka where there was an ATV trail which joins up with the railroad right of way that then crosses the gulch and continues a short distance to the end of the property. The County will have a perpetual right to obtain an easement on this alignment for free that it can exercise if it obtains public access across the property to the west (TMK: 5-4-9:26); in the meantime, the owner can restrict access.

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 ecological effect, except as such adverse effect is minimized to the extent practicable and clearly

outweighed by public health, safety, or compelling public interest. Although there will now be two lots with coastal frontage, no construction activity is proposed within the SMA and there will be no impact on the coastal ecosystems. Therefore, we have determined that the proposed consolidation and resubdivision of these eight (8) 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 eight (8) lots, the requirement to provide public lateral pedestrian accesses and future access down and across the Kapaau Gulch may require some infrastructural improvements but not anticipated to cost \$125,000.

By enclosed memorandum dated August 29, 2008, the Department of Public Works – Engineering Division submitted the following comments regarding the subject application:

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

We have determined that the subject properties are located within Flood Zone ‘A and VE’ Special Flood Hazard Areas, according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

The above information is based on the most recent FIRM for the County of Hawaii. This memo does not imply that the referenced property will or will not be free from flooding or flood damage. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map. Should a watercourse affect the property, it shall not be altered without first obtaining approval from DPW and a grading permit. A flood study may be required under Chapter 27 of the Hawaii County Code for watercourse alterations.

Any new construction or substantial improvements within a Special Flood Hazard Area will be subject to the requirements of Chapter 27 – Flood Control, of the Hawaii County Code.”

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 08-000093** is hereby approved to allow for the consolidation and resubdivision of eight (8) lots into eight (8) 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. 08-000093 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 agencies.
3. Continuing from the public pedestrian access required by SUB 7776, the applicant shall develop and implement a public access plan for the remainder of TMK: 5-3-6:21 that

provides a continuous traversable public lateral pedestrian access easement along the shoreline, down to the point as well as across Kapaau Gulch. This plan shall be submitted to the Planning Director for approval within one year after the granting of this permit. Approval of this public access plan shall be required prior to granting of final approval of the proposed consolidation and resubdivision of the eight lots. These public access easements shall be delineated on the subdivision final plat map.

4. The applicant shall submit a plan for the purchase and installation of Shoreline Public Access signage to the Planning Department prior to final approval of the consolidation/resubdivision. Approved signage must also be installed prior to final consolidation/subdivision approval. Signage should include, but not be limited to, the pedestrian access route and noted hazardous trail and shoreline conditions.
5. 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 proposed and/or 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 Use (Major) Permit from the Planning Commission.
6. Final consolidation and resubdivision of TMK: 5-4-9:4, 16 and 17 shall be secured within one (1) year from the approval date of this permit.
7. Final consolidation and resubdivision approval for the eight (8) lots shall be secured within two (2) years from the approval date of this permit.
8. For the resultant lots in the SMA, further subdivision or consolidation and resubdivision shall constitute a cumulative impact on the SMA and require a Special Management Area (Major) Use Permit.
9. All site plans submitted to the Planning Department for any future land use permits or development on the two lots within the S MA shall include the location of the public shoreline pedestrian access easements.
10. Future development of the proposed lots shall be subject to review against the SMA guidelines as such plans are implemented.
11. 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).

12. 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:



DARYN S. ARAI
Acting Planning Director

12/10/08

Date

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: August 29, 2008

Memorandum

TO : Christopher J. Yuen, Planning Director ✓
Planning Department

FROM : Galen M. Kuba, Division Chief *GK*
e Engineering Division

SUBJECT : Special Management Area Use Permit
Assessment Application (SAA 08-00353)
Applicant: Surety Kohala Corporation
Landowners: Surety Kohala Corporation; EWM Investents, LLC;
Ainakea Makai, LLC
Location: North Kohala. Hi
TMK: 5-3-006:021; 5-4-005:035; 5-4-9:010, 021, 022, 023, 027 and
Portions of 4, 16, 17, & 24

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

We have determined that portions of the subject properties are located within Flood Zone "A and VE" Special Flood Hazard Areas, according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

The above information is based on the most recent FIRM for the County of Hawaii. This memo does not imply that the referenced property will or will not be free from flooding or flood damage. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map. Should a watercourse affect the property, it shall not be altered without first obtaining approval from DPW and a grading permit. A flood study may be required under Chapter 27 of Hawaii County Code for watercourse alterations.

Any new construction or substantial improvements within a Special Flood Hazard Area will be subject to the requirements of Chapter 27 - Flood Control, of the Hawaii County Code.

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

