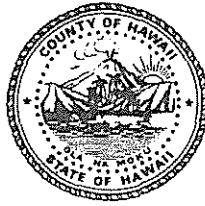


William P. Keno  
Mayor



BJ Leithead Todd  
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

March 10, 2009

Mr. Steven Lim  
Carlsmith Ball LLP  
P.O. Box 686  
Hilo HI 96721-0686

Dear Mr. Lim:

**Subject: Special Management Area Use Permit Assessment Application  
(SAA 09-000411)**

**Special Management Area Minor Permit No. 09-000100**

**Applicant: North Kona Village, LLC**

**Request: After-the-fact Grading Encroachments**

**Tax Map Key: 7-3-9:4, North Kona, Hawai'i**

This is in response to the above-referenced Special Management Area Use Permit Assessment Application for the after-the-fact grading encroachments that occurred unintentionally during the grading and contouring of the Kohanaiki Beach Access Road on the adjoining property, TMK: 7-3-9:3.

This parcel is designated Conservation by the State Land Use Commission. It is designated Urban Expansion and Open by the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map and zoned Open (O) by the County. It is also within the Special Management Area and has frontage along the shoreline.

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(10)(A)(ii) relating to Special Management Area, the proposed project does not qualify as exempt from the definition of "development". Therefore, a Special Management Area Minor Permit is required.

For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 09-000100 is hereby issued for the after-the-fact grading encroachments on the subject parcel.

MAR 11 2009

Mr. Steven Lim  
Carlsmith Ball LLP  
Page 2  
March 10, 2009

Please note, however, that any further grading on the subject property will require the submittal of a Special Management Area Use Permit Assessment Application for the proposed activity.

Should you have questions, please feel free to contact Esther Imamura of this department at 961-8288, extension 253.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

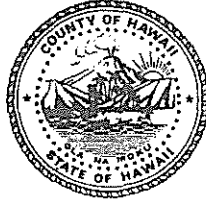
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Enclosures - SMM No. 09-000100  
Department of Public Works February 20, 2009 Memo

xc w/encls: Long Range Planning  
Mr. Norman Hayashi, Planning Commission  
Planning Department, Kona  
Mr. Abbey S. Mayer, Director - Office of Planning, DBED&T  
Tax Map Key: 7-3-9:3

William P. Kenoi  
Mayor



BJ Leithead Todd  
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

### Special Management Area Minor Permit No. 09-000100

**Project:** After-the-fact Grading Encroachments  
**Applicant:** North Kona Village, LLC  
**Location:** North Kona, Hawai'i  
**TMK:** 7-3-9:4 **Total Land Area:** 217.566 acres

#### Applicant's Request

**1. Project Description:**

The application is for the after-the-fact grading encroachments resulting from the grading and contouring of the Kohanaiki Beach Access Road on TMK: 7-3-9:3. The twelve grading encroachments vary from a few inches to a few feet along the common boundary and resulted from dozing activity along the common property boundary.

**2. Purpose of Project:**

The unintentional encroachments represent approximately 1,461 s.f. of area and the total earthwork volume is approximately 89 cubic yards. These grading encroachments will be left in place until the development of the "O'oma Beachside Village" project commences on TMK: 7-3-9:3.

**3. Project Valuation:** \$1,000.

**4. Determination:**

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)A(ii) relating to the Special Management Area, "*Grading, removing, dredging, mining, or extraction of any materials*" is not exempt from the definition of "development." Therefore, the proposed project requires a SMA Minor Permit.

#### State and County Plans

- 1. State Land Use District:** The subject parcel is designated Conservation.

2. **General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map is Urban Expansion and Open.
3. **County Zoning:** Open (O)
4. **Special Management Area (SMA):** The subject parcel is located entirely within the SMA and has frontage along the shoreline.
5. **Flood Zone:** Zone "X", not a Special Flood Hazard Area.

<p style="text-align: center;"><b>Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</b></p>
---

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 after-the-fact 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 after-the-fact grading 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 affected area is approximately 600 feet from the coastline. Therefore, the after-the-fact activity will not affect public access to the shoreline or public use of the shoreline area.

The \$1,000 valuation of the work performed is not in excess of \$125,000.

The enclosed Department of Public Works, Engineering Division memorandum dated February 20, 2009, stated the following:

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

*We have determined that affected portion of the subject property is located within Zone "X", not a Special Flood Hazard Area according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).*

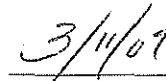
*No after the fact grading permit is required for the completed work described in the application."*

Therefore, pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 09-000100** is hereby approved for the after-the-fact grading encroachments on the subject property.

APPROVED:



BJ LEITHEAD TODD  
Planning Director



Date

DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO, HAWAII

PLANNING DEPARTMENT  
2009 FEB 25 PM 3:46

DATE: February 20, 2009

## Memorandum

**TO :** B.J. Leithead Todd, Acting Deputy Planning Director  
Planning Department

**FROM :** Galen M. Kuba, Division Chief *fr*  
*Q* Engineering Division

**SUBJECT :** Special Management Area Use Permit  
Assessment Application (SAA-000411)  
Applicant: North Kona Village, LLC  
Location: O'oma 2<sup>nd</sup>, N. Kona, HI  
TMK: 3 / 7-3-009:004

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

We have determined that affected portion of the subject property is located within Zone "X", not a Special Flood Hazard Area according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

No after the fact grading permit is required for the completed work described in the application.

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-HILO

