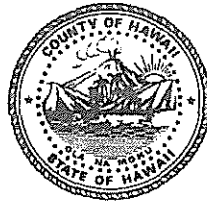


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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

May 29, 2009

Mr. Steven S. C. Lim
Carlsmith Ball LLP
121 Waiānuenue Avenue
Hilo HI 96721-0686

Dear Mr. Lim:

Subject: Special Management Area Use Permit Assessment Application (SAA 09-422)
Subdivision (SUB 07-000632)
Special Management Area Minor Permit No. 09-000106
Applicant: Pacific Plains Company, LLC
Land Owner: Pacific Plains, LLC
Request: Consolidation and Resubdivision of Ten (10) Lots into Eight
(8) Lots and One (1) Roadway Lot
Tax Map Key(s): (3) 5-2-007:004, 015, 016, 017, 018 and 019, and
5-3-007:028, 029, 030 and 031, 'A'amakāō, North Kohala, HI

This letter is in response to the Special Management Area Assessment Application (SMAA) we received on March 12, 2009 for the consolidation of ten (10) lots and resubdivision into eight (8) lots and one (1) roadway lot of the subject parcels as part of subdivision application SUB 07-000632. Also acknowledged is a revised map of the proposed resubdivision configuration date stamped by this office on May 29, 2009.

The parcels have a total of 150.76 acres, and are zoned Agriculture (A-20a) by the County of Hawaii. They are designated Agriculture and Conservation by the State Land Use Commission, and the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcels as Important Agriculture Lands and Open. Two (2) of the current parcels are located entirely within the Special Management Area (SMA), while six (6) parcels are partially located within the SMA.

JUN 02 2009

Mr. Steven S. C. Lim
Carlsmith Ball, LLP
Page 2
May 29, 2009

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(10)A(iii) relating to the Special Management Area, the proposed consolidation and resubdivision 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 No. 9-10(E), Special Management Area Minor Permit No. 09-000106 is hereby issued to allow for the proposed consolidation and resubdivision of ten (10) lots into eight (8) lots and one (1) roadway lot. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit. One condition of the permit is creation of a shoreline public access plan. Information on what should be included in the public access plan is enclosed for your reference.

If you have questions, please feel free to contact Dana Okano or Larry Brown of this department at 961-8288, extension 255 or 254, respectively.

Sincerely,



BJ LEITHEAD TODD
Planning Director

DO:cs

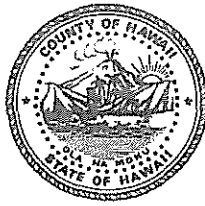
P:\wpwin60\CZM\SMM\2009\SMM 09-106L Pacific Plains Company LLC.rtf

Enclosures - SMM No. 09-000106
What should be included in a Public Access Plan
Department of Public Works April 8, 2009 Memo

xc: Long Range Planning
Mr. Daryn Arai, Administrative Permits Division

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

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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Phone (808) 961-8288 • Fax (808) 961-8742

Special Management Area Minor Permit No. 09-000106

Project: Consolidation and Resubdivision of Ten (10) Lots into Eight (8) Lots and One (1) Roadway Lot (SUB 07-000632)
Applicant: Pacific Plains Company, LLC
Land Owner: Pacific Plains Company, LLC
Location: 'A'amakāō, North Kohala, Hawai'i
TMK: 5-2-007:004; 5-2-007:015, 016, 017, 018, 019; 5-3-007:028, 029, 030, 031

Applicant's Request

1. Project Description:

The applicant proposes to develop an eight (8) lot agricultural subdivision and one (1) internal subdivision roadway lot to be known as the "Kapanaia Subdivision". The proposed resubdivision would result in a single bulk lot encompassing the entire area of the Special Management Area (SMA).

2. Purpose of Project:

Create an eight (8) lot agricultural subdivision, with one (1) roadway lot.

3. Project Valuation:

\$57,291.

4. Determination:

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*". Therefore, the proposal to consolidate and resubdivide ten (10) lots into eight (8) lots and one (1) roadway lot 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
5-2-007:004	64.34	Agricultural/ Conservation	IAL/OPEN	A-20a
5-2-007:015	1.6	Agriculture	IAL	A-20a
5-2-007:016	2.1	Agricultural	IAL	A-20a
5-2-007:017	1.8	Agricultural	IAL	A-20a
5-2-007:018	0.3	Agricultural	IAL	A-20a
5-2-007:019	0.3	Agricultural	IAL	A-20a
5-3-007:028	18.8	Agricultural/ Conservation	IAL/OPEN	A-20a
5-3-007:029	1.919	Agricultural/ Conservation	IAL/OPEN	A-20a
5-3-007:030	30.3	Agricultural/ Conservation	IAL/OPEN	A-20a
5-3-007:031	29.3	Agricultural	IAL	A-20a

IAL: Important Agricultural Lands

OPEN: Open Area

4. **Special Management Area (SMA):**

Portions of TMK: 5-2-007:004, 5-2-007:017, 5-3-007:028, 5-3-007:029, 5-3-007:030, 5-3-007:031 are located within the SMA, while parcels 5-2-007:018, and 5-2-007:019 are located entirely within the SMA.

5. **Flood Zone:**

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

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. In the Planning Director's letter of October 7, 2008 Deferral of Further Action, a number of details were provided to the applicant with regards to requirements for shoreline public access to ensure

consistency with other connecting trails in terms of width, location, safety, and preservation of the trail in the event of erosion. Compliance with the terms of said letter will be a condition of this permit.

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. Therefore, we have determined that the proposed consolidation and resubdivision of these ten (10) lots into eight (8) lots and one (1) roadway lot 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.

By enclosed memorandum dated April 16, 2009, 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 a portion of Proposed Lot 8 is located within Flood Zone 'VE' according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Any new construction or substantial improvements within the VE zone will be subject to the requirements of Chapter 27 – Flood Control, of the Hawai'i County Code.

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 Hawai'i County Code for watercourse alterations."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 09-000106** is hereby approved to allow for the consolidation and resubdivision of ten (10) lots into nine (9) lots, subject to the applicant's compliance with the conditions of approval as specified below.

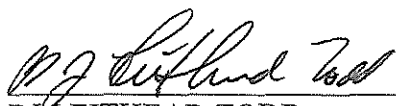
Conditions of Approval

The Planning Director has approved SMA Minor Permit No. 09-000106 subject to the following conditions:

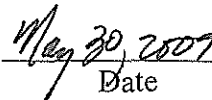
1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of other affected federal, state, and county agencies.
3. The applicant shall obtain a Conservation District Use Permit from the Board of Land and Natural Resources for the proposed consolidation and resubdivision within one (1) year from the date of this permit, since four (4) of the current lots affected by the proposal are located partially within the State Land Use Conservation District.
4. The applicant shall secure approval from Department of Land and Natural Resources State Historic Preservation Division (SHPD) for the report by Paul H. Rosendahl, Ph.D., Inc. titled "Archaeological Assessment Survey North Kohala Lands: Lands of 'A' amakāō, Halawa, Makapala, and Niuli'i North Kohala District, Island of Hawai'i," of February 2007 within one (1) year of the date of this permit. All conditions of approval, or requirements of SHPD must be complied with in full, prior to any land altering activity or issuance of any building permits within the subject subdivision.
5. The applicant shall develop and implement a public access plan for the proposed subdivision to provide a mauka-makai vehicular public access and a continuous traversable public lateral pedestrian access along the shoreline that connects to current or future lateral shoreline trails on neighboring TMKs 5-3-007:026 and 5-2-001:014. This plan shall incorporate public access requirements including, but not limited to, the Planning Director's letter of October 7, 2008 mentioned above, provisions for acquisition, installation and maintenance of public access and hazard signage, and the Planning Department's public access guide "What should be included in a Public Access Plan." This plan shall be submitted to the Planning Director for approval within one (1) year after the granting of this permit. Implementation of this public access plan must be verified and approved by the Planning Director prior to granting of final approval of the proposed consolidation/resubdivision. Should public access easements be identified as a requirement in the approved public access plan, they shall be delineated on the subdivision final plat map.
6. 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.
7. Final consolidation and resubdivision approval shall be secured within two (2) years from the approval date of this permit.
8. For the resultant lot 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 lots within the SMA shall include the location of the public shoreline pedestrian access easements.
10. 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).
11. 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:



BJ LEITHEAD TODD
Planning Director


Date

What should be included in a Public Access Plan

Each situation will be different, depending on permit conditions, the type of access it is, and its location. This list is intended to guide the applicant in creating a Public Access Plan that is consistent with intent of Chapter 34 (H.C.C.) and Chapter 205-A (H.R.S.). The applicant is responsible for the creation and submittal of a comprehensive and complete Public Access Plan acceptable to the Planning Director.

Location –

- A required public access easement must be sufficiently described by metes and bounds and encumbered to ensure accessibility from a public right-of-way. Metes and bounds descriptions and formal easements are not always necessary for SMA permits.
- In Subdivision maps, the easements should be clearly noted as “Public Access.” Any public access plan required by condition of a permit that does not require the granting of an easement shall include a map or site plan that clearly delineates the Public Access.
- When recordation is required, the Applicant shall provide the Planning Department with a copy of the recorded document.

Construction –

- The plan shall include a timeframe for completion of any required construction of the access as well as specifics on the type and width of surfacing, landscaping, accessory amenities, etc.

Parking –

- The plan must address the need for parking, including, but not limited to, the number of spaces, surfacing, and ADA accessibility.

Hours –

- The plan must specify the hours of availability for the Public Access.

Signage & sign replacement –

- The plan shall identify what Shoreline Public Access signage, if any, shall be installed and who will be responsible for its purchase installation, maintenance and replacement. Basic SPA signs may be purchased from the County via the Planning Department depending on availability. Otherwise, the Planning Department will provide the applicant with appropriate signage specifications and provider information so the applicant may acquire signage independently.

Rules –

- Any special or site specific rules the applicant deems necessary shall be clearly articulated in the plan and approved by the Planning Director

Maintenance responsibility –

- The plan shall clearly identify who is responsible for any maintenance requirement to ensure the required Public Access and any required amenities remain in a suitable condition for use as they are intended.

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII



PLANNING DEPARTMENT
COUNTY OF HAWAII

2009 APR -8 PM 4:10

DATE: April 8, 2009

Memorandum

TO : B. J. Leithead-Todd, Planning Director
Planning Department

FROM : Galen M. Kuba, Division Chief 
 Engineering Division

SUBJECT : Special Management Area Use Permit
Assessment Application (SAA 09-000422)
Applicant: Pacific Plains Company, LLC
Location: North Kohala, Hawaii
TMK: 3 / 5-2-007:004, 5-2-007:015-019, & 5-3-007:028-031

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

We have determined that a portion of Proposed Lot 8 is located within Flood Zone "VE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Any new construction or substantial improvements within the VE zone will be subject to the requirements of Chapter 27 - Flood Control, of the Hawaii County Code.

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.

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