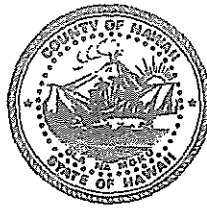


William P. Kenoi
Mayor



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

January 19, 2010

Mr. Rodney K Diamond
HCR #3 Box 14073
Kea'au, HI 96749

Dear Mr. Diamond:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(SAA 09-000511)
Special Management Area Minor Permit No. 10-000138
Applicant: Rodney K Diamond
Land Owner: Andre and Jyoti Ulrych
Request: After the Fact Construction of Water Well
Tax Map Key: (3) 5-3-007:047, Por. of Halawa to Pueke, North Kohala,
Hawai'i**

This is to acknowledge receipt on December 3, 2009 of your Special Management Area Use Permit Assessment Application for the after the fact construction of a water well. The original Department of Land and Natural Resources Commission on Water Resource Management Well Construction/ Pump Installation Permit, which was reviewed by this department, proposed this well be located in a different site outside of the Special Management Area (SMA). However, upon completion of the Well Construction Completion Report, it was discovered that the well site was now within the SMA and subject to SMA rules.

The subject property consists of 117.681 acres. It is zoned Agricultural (A-20a) by the County and is designated Agricultural by the State Land Use Commission. The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Important Agricultural Land.

Mr. Rodney K Diamond

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January 19, 2010

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(10)(A)(v) relating to Special Management Area, the construction of a water well is considered "*Construction, reconstruction, demolition or alteration of the size of any structure*" and defined as "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. 10-000138 is hereby issued to allow for the after the fact construction of a well, subject to the applicant's compliance with the conditions of approval as specified in the permit.

Should you have questions, please feel free to contact Bethany Morrison of this office at 961-8138.

Sincerely,


BJ LEITHEAD TODD
Planning Director

BJM:cs

-- -- P:\wpwin60\CZM\SMM\2010\SMM 10-138 L Diamond Ulrych Well.doc

Enclosure: SMM No. 10-000137
Memorandum from Department of Public Works

cc w/encls: Andre and Jyoti Ulrych
PO Box 142
Kapa'au HI 96755

Long Range Planning Division

Planning Division

Mr. Rodney K Diamond

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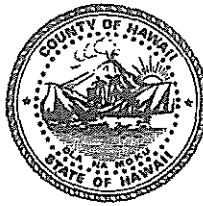
January 19, 2010

cc ltr only: Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
State of Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

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

Mr. Ryan Imata
Commission on Water Resource Management
State of Hawai'i Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

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

Special Management Area Minor Permit No. 10-000138

Project: After the Fact Construction of Water Well
Applicant: Rodney K Diamond
Land Owner: Andre and Jyoti Ulrych
Location: Por. of Halawa to Pueke, North Kohala, Hawai'i
TMK: (3) 5-3-007:047
Land Area: 117.681 acres

Applicant's Request

1. Project Description:

The land owner received a Well Construction/ Pump Installation Permit from the Department of Land and Natural Resources Commission on Water Resource Management for the construction of two (2) wells on the subject property. However, upon completion of the Well Construction Completion Report, it was discovered that one well had been constructed within the Special Management Area (SMA).

2. Purpose of Project: The well will be used to provide water for landscaping and agriculture uses.

3. Project Valuation: \$10,120

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(v) relating to the Special Management Area (SMA), the "*Construction, reconstruction, demolition, or alteration of the size of any structure*" is defined as "development." Therefore, the after the fact construction of the water well requires a SMA Minor Permit.

State and County Plans

- 1. State Land Use District:** The subject property is designated Agricultural by the State Land Use Commission.
- 2. General Plan:** The subject property is designated Important Agricultural Land by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.

3. **County Zoning:** The subject property is zoned Agricultural (A-20a).
4. **Special Management Area:** Although the subject property is located in the SMA, it does not have frontage along the coastline.
5. **Flood Zone:** The subject property is located in Flood Zone "X".

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

This parcel does not have frontage along the coastline. Therefore, the proposed improvements will not affect public access to the shoreline or public use of the shoreline 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 tsunamis, 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.

The estimated project cost of approximately \$10,120 is not in excess of \$125,000.

The enclosed Department of Public Works, Engineering Division memorandum dated January 14, 2010 states the following:

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

We have determined that the subject property is located within Flood Zone "X" according to the Flood Insurance Rate (FIRM) by the Federal Emergency Management Agency (FEMA).

The above information is based on the most recent FIRM for the County of Hawai'i. This memo does not imply that the referenced property will or will not be free from flooding or flood damage. Zone "X" is not a designated Special Flood Area. 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 Hawai'i 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."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 10-000138** is hereby approved to allow the after the fact construction of a well for landscaping and agriculture uses, 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. 10-000138, 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 secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. No additional land alteration, grubbing, landscaping or construction activities, including but not limited to, the stockpiling of debris, construction materials or equipment, shall occur without prior SMA approval from this department.
4. 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/owner, 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).
5. 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:

JAN 19 2010


BJ LETTHEAD TODD
Planning Director


Date

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: January 14, 2010

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 09-000511)
Applicant: Rodney K. Diamond for Andre and Jyoti Ulrych
Location: Halawa to Pueke, N. Kohala, HI
TMK: 3 / 5-3-007:047

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

We have determined that the subject property is located within Flood Zone "X" 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. Zone "X" is not a designated Special Flood Area. 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.

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