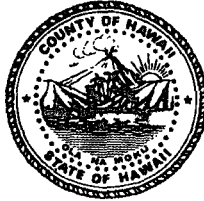


William P. Kenoi  
Mayor



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 25, 2010

Roy A. Vitousek III, Esq.  
Cades Shutte  
75-170 Hualālai Road, Suite B-303  
Kailua Kona HI 96740

Dear Mr. Vitousek:

**Subject: Special Management Area (SMA) Use Permit Assessment Application (SAA 09-000519)**  
**Special Management Area Minor Permit No. 10-000140 (SMM 10-140)**  
**Applicant: Xin Xin Guo and Jonathan A. Kepecs**  
**Landowner: Guo/Kepecs Trust**  
**Request: Repair of Existing Boundary Rock Walls**  
**Tax Map Key: 6-9-005:018, Puakō Beach lots, Lalamilo, South Kohala, Hawai'i**

This is to acknowledge receipt on December 22, 2009, of the application for the repair of existing boundary rock walls on the subject parcel. This includes repair of dilapidated areas of the walls, and reconstruction of area of the walls that are breached.

This 1.62 acre parcel is zoned Residential (RS-10) by the County and designated Urban by the State Land Use Commission. It is in the Special Management Area and has frontage along the coastline.

For your information, Hawai'i Revised Statutes (HRS) Chapter 205-A-22 and Planning Commission Rule 9-4(10)A(v), states that "development" includes "Construction, reconstruction, demolition, or alteration of the size of any structure." Therefore, the proposed reconstruction and repair activity is considered "development" and requires a Special Management Area Minor Permit.

For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 10-000140 is hereby issued to allow the repair and reconstruction of the existing dry stack rock wall on the subject parcel, subject to the applicant's compliance with the conditions of approval as required by the permit.

**SCANNED**

JAN 27 2010

By: \_\_\_\_\_

Mr. Roy A. Vitousek  
Cades Shutte  
Page 2  
January 25, 2010

If you have questions, please feel free to contact Dana Okano of this office at 961-8134.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

DO:cs

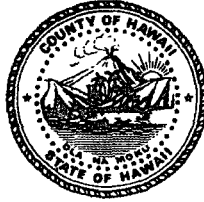
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Enclosures: SMM 10-000140  
Department of Public Works January 22, 2010 Memo  
Department of Health September 25, 2006 Letter and Attachments

cc w/encl: Long Range Planning  
Planning Commission  
Planning Department, Kona

cc ltr only: Mr. Abbey S. Mayer, Director – Office of Planning, DBED&T

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. 10-000140

**Project:** Repair of Existing Rock Boundary Wall  
**Applicant:** Xin Xin Guo and Jonathan A. Kepecs  
**Land Owner:** Guo/Kepecs Trust  
**Location:** Puakō Beach Lots, Lalamilo, South Kohala, Hawai'i  
**TMK:** 6-9-005:018 **Land Area:** 1.62 acres

#### Applicant's Request

##### 1. Project Description:

This application is for the proposed repair of an existing dry stack rock wall along the northern (makai), southern and eastern lengths of the subject parcel. Parts of the wall are breached due to either wave impacts or the general dilapidated state of the wall from lack of maintenance. These breached portions will need to be reconstructed. Additional stabilization and maintenance work will also be needed along the unbreached portions of wall. Some portions of the walls are also encroaching into State and County owned lands adjacent to the parcel. These encroachments will be shaved off according to the application, and rights-of-entry have been received from both State and County of Hawai'i to remove the portions of wall encroaching on these government lands.

The application originally received in this office on June 21, 2008 states that reconstructed sections of the wall that are breached will involve "the stabilization of existing wall by placement of foundation stones approximately 8 inches below interior lot grade." However, the cover letter accompanying the re-submittal of the application dated December 21, 2009 explains that this "placement of the foundation stones 8 inches below interior lot grade," are part of the existing foundation only and will not increase the depth of the wall.

A portion of the makai (seaward) section of wall is makai of the certified shoreline and therefore subject to the jurisdiction of the Department of Land and Natural Resources.

##### 2. Purpose of Project:

The purpose of the project is to restore a legally non-conforming dry stack rock wall on the subject property.

##### 3. Project Valuation: \$48,000.

#### 4. Determination:

Hawaii Revised Statutes Chapter 205A and Planning Commission Rule 9-4(10)a(v) states that "Development" includes "*Construction, reconstruction, demolition, or alteration of the size of any structure*". Therefore, the repair and reconstruction of the dry stack rock wall requires a Special Management Area (SMA) Minor Permit.

#### State and County Plans

1. **State Land Use District:** The subject property is designated Urban.
2. **General Plan:** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property as Low Density Urban.
3. **County Zoning:** The subject property is zoned Residential (RS-10).
4. **Special Management Area (SMA):** The subject property is located in the SMA and has frontage along the coastline.
5. **Flood Zone:** "VE and AE"

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

The subject property has frontage along the coastline, however, the improvements do not affect the recreational resources available to the public as there is a County owned public access right-of-way along the eastern portion of the parcel to allow mauka (inland) to makai public access, and a State owned parcel makai of the subject parcel to allow for lateral public access along the shoreline. During high tides or periods of high wave action, lateral shoreline access may be limited due the shoreline reaching mauka of the existing and portions of the proposed reconstructed wall. However, since the legally non-conforming wall was completed prior to June 22, 1970, then according to Planning Department Rules of Practice and Procedure §11-7(b) and (c), the structure "may be repaired in conformance with plans approved by the Planning Department, but shall not be enlarged without a shoreline setback variance," and "may be routinely maintained." The proposal is only for the reconstruction of the existing wall to its original size dimensions, not for enlargement or increase of its height, width, or depth.

Check all objectives and policies found to be consistent with the repair and reconstruction activities. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The repair and reconstruction of the dry stack rock wall are 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 improvements are consistent with the Hawaii County General Plan and the Zoning Code.
- ☒ The improvements do 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 improvements are 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 improvements conform to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

## Findings

As discussed above, the improvements do 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 improvements are consistent with the Hawaii County General Plan and Zoning Code.

The improvements are consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated cost of approximately \$48,000 is not in excess of \$125,000.

Upon review of the enclosed January 22, 2010 memorandum, the Department of Public Works, Engineering Division stated the following:

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

*We have determined that the subject property is located within Flood Zones "VE and AE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).*

*Any improvements within those flood zones are subject to the requirements of Chapter 27 - Floodplain Management, of the Hawai'i County Code. The proposed wall repair proposal should be evaluated for potential hazards to the subject and adjacent properties by our staff prior to approving the application. We are forwarding the application for further review by Frank Demarco, the Floodplain Manager out of our Hilo office."*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 10-000140** is hereby approved to allow for the repair and reconstruction of the dry stack rock wall on the subject parcel, 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. 10-000140** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Applicant shall secure all permits required for the repair and reconstruction within one (1) year from the approval date of this permit.
3. The applicant shall comply with all applicable requirements of the State Department of Land and Natural Resources and County of Hawaii with regard to the right-of-entry permits granted for the proposed work, and Office of Conservation and Coastal Lands for the portions of repair or reconstructed wall makai of the shoreline.
4. The applicant shall comply with all other applicable requirements of other affected federal, state, or county agencies. Provided that if in meeting this requirement, the

repair or reconstruction of the dry stack wall will be enlarged in its height, width, or depth, this SMA Minor Permit shall be deemed null and void, and a Shoreline Setback Variance shall be applied for by the applicant for the work.

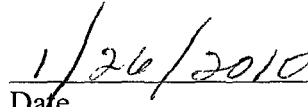
5. The proposed "additional stabilization" methods discussed in the application can in no way mean enlargement of the structure whether by height, width or depth. The "placement of foundation stones approximately 8 inches below interior lot grade" can only be the replacement of original stones that are either missing or misaligned and shall not be added where they did not previously exist in the wall.
6. The original dimensions of the wall must be adhered to which were no greater than 36 inches above interior lot grade along the northern/makai length of the wall, no more than 42 inches above interior lot grade along east and south lengths of wall, and no more than 30 inches thick.
7. All proposed Best Management Practices to mitigate potential impacts with regard to vehicles and sea turtles listed in your December 21, 2009 cover letter shall be adhered to in their entirety.
8. No construction equipment or materials shall be placed, stored, or stockpiled makai of the certified shoreline or on State or County lands. No equipment or materials shall enter the ponds on the subject property that are mauka of the certified shoreline, without prior approval of the U.S. Army Corps of Engineers or State of Hawai'i Department of Health.
9. A construction barrier meeting with the approval of the Planning Director shall be erected around the project site until final inspection by Department of Public Works. A silt barrier shall be erected around the pond just mauka of the certified shoreline and within the shoreline setback area.
10. All repair or reconstruction work within 40 feet of the certified shoreline must occur during periods of low tides when there is no possibility of high waves entering the work site. Should tides rise or waves increase, the work site must be secured and work cease. Any use of mortar or other liquid or semi-solid materials within the shoreline setback can only be applied during periods of low tide when it is clear from tide charts and weather reports that all liquid or semi-solid material will be dry or hardened prior to the next high tide or high wave events that may enter the area.
11. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b), Hawaii Revised Statutes.
12. If a concrete mix machine is to be utilized, the equipment must first be contained and measures taken to prevent spillage. Please contact our Kona Zoning Inspectors at 327-3510 to set up a site inspection to verify compliance with this condition.
13. The construction barrier must be shown and properly noted on the plans submitted with any permits required for any land altering or construction activities. The construction notes on the plans must include the following statement, "The construction barrier must be erected prior to any land altering or construction

activities, and must remain in place until final inspection by Department of Public Works. No construction activities, including but not limited to the stockpiling of construction materials, rubbish or debris, shall occur within the 40-foot shoreline setback area.”

14. All solid and hazardous waste must be disposed of in a manner meeting with State of Hawai'i Department of Health (DOH) regulations. Wastes include both liquid and solid materials. A letter and informational handout from DOH is provided for your reference pertaining to these requirements and your responsibilities.
15. 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).
16. 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

  
Date





DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO, HAWAII

DATE: January 22, 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 (SAA09-000519)  
Applicant: Xin Xin Guo and Jonathan A. Kepecs  
Location: Puako Beach Lots, S. Kohala, HI  
TMK: 3 / 6-9-005:018

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

We have determined that the subject property is located within Flood Zones "VE and AE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

Any improvements within those flood zones are subject to the requirements of Chapter 27 - Flood Plain Management, of the Hawaii County Code. The proposed wall repair proposal should be evaluated for potential hazards to the subject and adjacent properties by our staff prior to approving the application. We are forwarding the application for further review by Frank Demarco, the Floodplain Manager out of our Hilo office.

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

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
EMD/SHWB

September 25, 2006

S0938JV

**TO ALL INTERESTED PARTIES:**

The Hawai'i Department of Health, Solid and Hazardous Waste Branch is issuing an Illegal Dumping Notice (Sep. 2006) and related poster for jobsites.

The notice and poster is intended to help property owners, managers, contractors, waste haulers, developers and other interested parties understand current State laws regarding illegal dumping in Hawaii. Only permitted disposal or recycling facilities are authorized by the Department of Health to accept solid wastes. **IMPORTANT:** Generators of solid waste such as property owners may be held responsible even though they hired someone else to dispose of or recycle the waste. They are also responsible for being aware of any potential hazardous wastes or contaminants that may be within the wastes.

This notice also sets procedures on how affected and/or interested parties may report illegal dumping incidences and also proposes prevention measures.

Please bring this notice to the attention of anyone you know who may have an interest in this matter. Should you have any questions regarding this policy, please contact the Solid Waste Section of the Solid and Hazardous Waste Branch at (808) 586-4226.

Sincerely,

  
STEVEN Y. K. CHANG, P.E., CHIEF  
Solid and Hazardous Waste Branch

Attachments

**The law requires you to dispose solid waste only at recycling or disposal facilities permitted by the Department of Health.**

**“Solid waste” includes municipal refuse, construction and demolition waste, household waste, tires, car batteries, derelict vehicles, green wastes, furniture, and appliances.**

**Illegal dumping of solid waste  
or allowing illegal disposal of solid waste  
on your property  
even if contractual or other arrangements are made  
could subject you to fines from  
\$10,000 to \$25,000 per occurrence  
and could lead to felony prosecution  
in accordance with Chapter 342H, HRS.**

**Contact the Department of Health,  
Solid Waste Section at 586-4226  
to report illegal dumping activities  
or if you have further questions.**

State of Hawai'i  
Department of Health  
Solid Waste Section  
September 2006

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# NOTICE

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**TO ALL PROPERTY OWNERS/MANAGERS, CONTRACTORS, WASTE HAULERS, DEVELOPERS AND INTERESTED PARTIES:**

**PLEASE BE AWARE OF CURRENT STATE LAW REGARDING  
ILLEGAL DUMPING IN HAWAII**

**YOU ARE RESPONSIBLE FOR THE PROPER REMOVAL OF  
RESIDENTIAL, COMMERCIAL AND INDUSTRIAL SOLID WASTE TO  
PERMITTED DISPOSAL OR RECYCLING FACILITIES (§342H, HRS)**

**FINES MAY BE LEVIED ON THE GENERATOR OF THE WASTE, EVEN  
IF THEY HIRED SOMEONE ELSE TO DISPOSE THE WASTE**

- Everyone is responsible for properly removing solid wastes to facilities permitted by the Department of Health.
- Anyone including property owners, lessees, contractors and waste haulers may be subject to administrative, civil or criminal penalties and held responsible for property cleanup.
- Illegal dumpers may be subject to enforcement action and administrative and civil penalties of up to \$10,000/day for each offense (§342H-9, HRS).
- Those who knowingly dispose of solid waste equal to or greater than one cubic yard and less than ten cubic yards are subject to criminal penalties of up to \$25,000/day for each offense (§342H-39, HRS).
- It is a class C felony offense to knowingly dispose of solid waste equal to or greater than ten cubic yards anywhere other than a permitted solid waste management system without the written approval of the Director of the Department of Health (§342H-37, HRS).
- Each day of violation is a separate offense.

\*\*\*\*\*

**YOU ARE ALSO RESPONSIBLE FOR BEING AWARE OF POTENTIAL  
HAZARDOUS WASTES OR CONTAMINANTS THAT MAY BE WITHIN  
THE COMMERCIAL AND INDUSTRIAL WASTE MATERIALS**

Your facility may be subject to State of Hawaii hazardous waste requirements if you generate more than 220 lbs. or 100 kg of hazardous wastes (§11-261-5, HAR) monthly. Persons or entities who generate less than 220 lbs. or 100 kilograms per month are considered as conditionally exempt small quantity generators. Requirements include:

- Make a waste determination
- Determine your generator category
- Get an EPA ID Number
- Store and manage properly
- Recycle or dispose properly
- Recordkeeping

Typical hazardous wastes from *commercial* construction and demolition jobs include:

- Oil based paint, stains, varnishes
- Acids & bases (e.g., muriatic acid, etc.)
- Ignitable waste (gasoline & diesel)
- Used batteries
- Waste vehicle lubricants (used motor oil, etc.)
- Latex paint with mercury
- Thinners and painting solvents
- Spent sand blast material from paint removal operations
- Weatherproofing/insulation solvents
- Finishing and flooring adhesives and sealants
- Mechanical/electrical waste solder and fluxes
- Absorbent material used to cleanup spills
- Contaminated rags
- Waste mercury or acrylic mercury paint
- Non-empty aerosol cans
- Fluorescent light bulbs
- Contaminated paint chips
- Lead-based paint wood debris

**FOR TECHNICAL ASSISTANCE REGARDING HAZARDOUS WASTE  
REQUIREMENTS, PLEASE CONTACT THE SOLID AND HAZARDOUS  
WASTE BRANCH AT (808) 586-4226**

\*\*\*\*\*

## WHAT ARE OPEN DUMPS?

Open dumps or "illegal dumps" are disposal sites that operate in nonconformance with any applicable standards, relevant permit conditions, rules, or statutes set by the State of Hawaii.

Illegal dumps are pollution sources created when uncaring people avoid the law and avoid:

- **tip fees**, because it costs money for people to throw away wastes; and
- the **time and attention** needed to dispose of waste properly.

Illegal dumpers may claim to operate a transfer station or recycling business, only to abandon the property once it is full of waste. In many cases, illegal dumpers are also breaking other laws related to vehicle licensing, insurance, drug possession, or theft (EPA, 1998).

## OPEN DUMPS ENDANGER HUMAN HEALTH AND POLLUTE THE ENVIRONMENT

Illegal dumps could contain hazardous wastes and other contamination. Whether or not the wastes are buried, illegal dumps can pollute our land, air, and drinking water sources. Illegally disposed wastes:

- are often combustible and pose fire hazards;
- generate toxic fumes if the waste is burned;
- may contain and conceal hazardous and toxic substances (used oil, needles);
- may form leachate in areas with heavy rain that pollutes groundwater and soil;
- if buried, may decompose in time, leading to ground settlement and "cave-ins";
- may form explosive gases like methane due to waste decomposition;
- attract rodents (rats, flies, mosquitoes) which may carry infectious disease; and
- attract more illegal dumping and criminal activity to the community

## WHAT YOU CAN DO

A joint effort by government, landowners, the construction industry, waste haulers and concerned citizen's groups is needed to address and prevent illegal dumping.

### Property Owners:

Please maintain and control unwanted entry into your property to the best extent possible, using:

- "No Dumping" signs placed in high-incidence areas
- Lighting
- Barriers like fences, posts, berms, rocks, concrete barriers
- Landscaping and beautification projects

### Contractors:

- Evaluate proposals with low bids carefully. Look for a line-item estimate on "waste disposal" and compare that with the volume of waste that the bidder expects to remove.
- Make haulers responsible to deliver the wastes they generate at the project to permitted solid waste disposal or recycling facilities. Require them to submit

receipts to prove that wastes were properly delivered.

- When in doubt, contact us at (808) 586-4226 to find out which recycling facility or landfill is currently permitted to accept wastes.

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**Everyone:**

Report any suspected illegal dumping activity by filing a complaint with:

- Dept. of Attorney General, Investigations Office: 586-1240;
- Dept. of Health Solid and Hazardous Waste Branch: 586-4226;
- 9-1-1;
- Environmental Concern Line: 692-5656 (Oahu only); or
- Neighbor Island District Health Offices: 933-0401 (Hilo), 322-1507 (Kona), 241-3323 (Kauai) or 584-8234 (Maui)

Please provide us with specific information:

- Date(s);
- Time(s);
- Names on trucks;
- License plate numbers;
- Location of dumping activity;
- Type of material(s) disposed;
- Estimated quantity of waste;
- Photos; and
- Other marks of identification

Reference: United States. Environmental Protection Agency. Region 5. Illegal Dumping Prevention Guidebook. Chicago: EPA, 1998.