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County of Hawai'i
PLANNING DEPARTMENT

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December 13, 2013

Mr. Gregory R. Mooers
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

SUBJECT: Special Management Area Use Permit Assessment Application No. 13-001053
Special Management Area Minor Permit No. 13-000290
Applicant: Gregory R. Mooers
Landowner(s): Lisa A. Treadwell – 1988 Revocable Trust
L. Brian McGann
Roberta A. McGann
Request: Subdivision of One Lot into Two Lots
Tax Map Key: (3) 6-9-002:026; Puakō, Hawai'i

This is to acknowledge receipt on November 15, 2013 of the Special Management Area Use Permit Assessment Application (SAA-13-1053) for the subdivision of the subject parcel, which is currently a two-unit Condominium Property Regime (CPR), into two separate lots of record. The property consists of 33,358 s.f., is situated in the State Land Use Urban district, zoned Resort (V-1.25) by the County, and designated Low Density Urban by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. In addition, the property is located entirely within the Special Management Area (SMA) with approximately 175' of property along the shoreline.

Final subdivision approval for Subdivision No. 6678 (SUB No. 6678), which created the current boundaries of the subject parcel, was granted on January 8, 1996. The consolidation and subsequent subdivision was exempt from the definition of "development" per Planning Commission Rules of Practice and Procedure, Rule 9-4(e)(2)(M). Final Plan Approval and SMA exemption determination were also granted on March 23, 2001 for a single-family residence (Building Permit No. 015542) on the subject property, of which only the elevated foundation appears to have been completed. While the Final Plan Approval and SMA determination for the single-family residence do not contain expiration dates, Condition 2 of Final Plan Approval dated March 23, 2001 states: "[the] 40-foot shoreline setback line (taken from the shoreline survey certified on September 26, 2000), shall be staked and flagged prior to and for the

duration of the construction activities on the subject property. No structures or land alteration and construction activities will be permitted within the 40-foot shoreline setback area without the prior approval of the Planning Department.” Please note that while SMA and Final Plan Approval for the single-family residence are still extant, any continued construction on the stalled dwelling will require a current certified shoreline, approved by the Chairperson of the Board of Land and Natural Resources, to ensure the 40-foot shoreline setback pursuant to the SMA and Final Plan Approval determination of 2001 is met.

Proposed is the subdivision of TMK: (3) 6-9-002:026 into two separate lots of record; lot D-1 containing 16,697 s.f., and lot D-2 containing 16,661 s.f. No associated construction is proposed in addition to the subdivision action. The most recent shoreline certification, dated May 2, 2013, only covers the makai boundary of proposed lot D-2, but not the makai boundary of proposed lot D-1. The certified shoreline of proposed parcel D-2 indicates that a portion of the shoreline is within the property’s boundary, therefore, arrangements shall be made to accommodate lateral pedestrian public access along the shoreline of proposed properties D-1 and D-2 through a public access agreement with the County of Hawai‘i, meeting with the approval of the Planning Director. A draft template of the public access agreement has been enclosed for review and comment by the property owners with this letter.

Special Management Area Determination:

According to Chapter 205A-22, Hawai‘i Revised Statutes (HRS), as amended, relating to Special Management Area, “development” includes the “*Change in the density or intensity of use of land, including but not limited to the division or subdivision of land*”. “Development” does not, however, include the “*Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;*” (emphasis added). Since the subject property was already part of a previous subdivision action (SUB No. 6678), the proposed subdivision does not qualify for an exemption from the definition of “development.” Given that the stated valuation of \$0 is less than the \$500,000 maximum allowable for the issuance of a SMA Minor Use Permit, we have determined that the proposed subdivision meets the requirements for 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. 13-000290 is hereby issued for the subdivision of the subject property into two separate lots of record, subject to the applicant’s compliance with the conditions of approval as specified in the permit.

Please note that future submissions for SMA review must be on the Planning Department’s most recent SMA Use Permit Assessment Application form, found on our website at (<http://records.co.hawaii.hi.us/Weblink8/1/doc/66869/Electronic.aspx>) and enclosed with this letter for your convenience.

Mr. Gregory R. Mooers
December 13, 2013
Page 3

If you have questions or require further information, please feel free to contact Lucas Mead of this office at (808) 961-8140.

Sincerely,


DUANE KANUHA
Planning Director

LM:

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Encl: SMM-13-000290
DRAFT: Public Access Agreement Template – Treadwell & McGann
Department of Public Works Memo dated December 3, 2013
Special Management Area Use Permit Assessment Application (blank)

cc: Long Range Planning
Planning, Administrative Permits
Planning Kona Office
SUB-13-001302

cc ltr/SMM: Lisa A. Treadwell
P.O. Box 4608
Carmel, CA 93921

cc ltr/SMM: Brian and Roberta McGann
69-1616 Puakō Beach Dr.
Kamuela, HI 96743

cc ltr only: Mr. Jesse K. Souki, Director
Office of Planning, DBEDT
P.O. Box 2359
Honolulu, HI 96804-2359



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Special Management Area Minor Permit No. 13-000290

Project: Subdivision of One Lot into Two Lots
Applicant: Gregory R. Mooers
Landowners: Lisa A. Treadwell – 1988 Revocable Trust
L. Brian McGann
Roberta A. McGann
Location: Puakō, South Kohala, Hawai'i
TMK: (3) 6-9-002:026 **Land Area:** 33,358 s.f.

Applicant's Request

1. Project Description:

Proposed is the subdivision of TMK: (3) 6-9-002:026 into two separate lots of record; lot D-1 containing 16,697 s.f., and lot D-2 containing 16,661 s.f. No associated construction is proposed in addition to the subdivision action.

2. Purpose of Project:

The proposed project will subdivide the property, which is currently a two-unit Condominium Property Regime (CPR), into two separate lots of record.

3. Project Valuation: \$0

4. Determination:

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), as amended, relating to Special Management Area, "development" includes the "Change in the density or intensity of use of land, including but not limited to the division or subdivision of land". "Development" does not, however, include the "Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels". Since the subject property was already part of a previous subdivision action (SUB No. 6678), the proposed subdivision is not exempt from the definition of "development", requires review against the Special Management Area rules and regulations, and requires a SMA Minor Permit

State and County Plans

- 1. State Land Use District:** The parcel is located in the State Land Use Urban District.

2. **General Plan:** The parcel is designated as Low Density Urban by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The parcel is zoned Resort (V-1.25) by the County of Hawai'i.
4. **Special Management Area:** The subject property is located entirely within the SMA and has substantial ocean frontage.
5. **Flood Zone:** VE & AE.

<p style="text-align: center;">Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</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 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 Hawai'i 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 subdivision is consistent with the Hawai'i 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 \$0 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated December 3, 2013, states the following:

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

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

Ground alterations, new construction, improvements to repetitive loss structures and substantial improvements of structures within Parcel 3/ 6-9-002:026 are subject to the requirements of Chapter 27 – Flood Plain Managements, of the Hawai'i County Code.

Should there be any questions concerning this matter, please contact Kiran Emler of our Kona Engineering Division office at 323-4851."

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 13-000290** is hereby approved for the subdivision of the subject parcel into two separate lots of record, subject to the applicant's compliance with the conditions of approval as specified below.

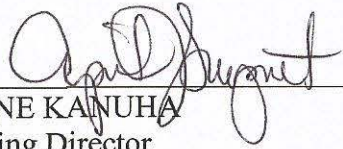
Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 13-000290**, 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. This permit does not authorize any other uses, activities or operations, including but not limited to, grading, grubbing, landscaping, or the placement or construction of any structures, on the subject property without further review of any such additional uses, activities or operations against the SMA Guidelines.
4. The Condominium Property Regime shall be dissolved prior to issuance of Final Subdivision Approval for Subdivision No. 13-001302 (SUB 13-001302).
5. A public access agreement, meeting with the approval of the Planning Director, shall be submitted for recordation with the Bureau of Conveyances prior to issuance of Final Subdivision Approval for SUB 13-001302. The applicant shall provide the Planning Department with a copy of the recorded public access agreement within 30 days of receipt from the Bureau of Conveyances.
6. Final Plat Maps for SUB 13-001302 shall indicate a 10-foot wide lateral easement for public pedestrian access that follows a parallel course inland of the current or any future certified shoreline *or* the seaward property boundary, which ever location is further inland.
7. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigative measures are taken for the discovery; with written guidance from the State Historic Preservation Division of the Department of Land and Natural Resources.

8. 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:


for DUANE KANUHA
Planning Director

12-13-13
Date