

William P. Kenoi  
Mayor



Duane Kanuha  
Director

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Deputy Director

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**County of Hawai'i**  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
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Phone (808) 961-8288  
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March 30, 2015

Mr. Ken Church  
[dockline3@yahoo.ca](mailto:dockline3@yahoo.ca)

Dear Mr. Church:

**SUBJECT: Special Management Area Use Permit Assessment Application  
(SAA 15-001250)  
Special Management Area Minor Permit (SMM 15-000328)  
Applicant: Kenneth S. Church  
Land Owner: Kenneth Stanley Church  
Request: Consolidation and Resubdivision of Three (3) Lots with  
the Adjacent Former Railroad Right-of-Ways; and  
Conduct Basic Data Collection  
Tax Map Key: (3) 2-9-003:013, 029 and 060, Wailea, South Hilo, Hawai'i**

This is to acknowledge receipt on January 28, 2015 of the Special Management Area Use Permit Assessment Application for the consolidation and resubdivision of three (3) lots with the adjacent former railroad right-of-ways and to conduct basic data collection on the former railroad right-of way adjacent to Parcel 29. Also acknowledged is receipt of additional information on February 15, 2015 and a time extension on March 1, 2015.

The subject area is zoned Agricultural (A-20a) by the County. Although it is designated Conservation by the State Land Use Commission, Hawai'i Revised Statutes, Chapter 205-5(a) states that the Department of Land and Natural Resources has jurisdiction over uses and activities on State designated Conservation land.

This area is designated Open by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. It is located within the Special Management Area and all parcels have coastal frontage.

**Compliance with Environmental Impact Statement Regulations (Chapter 343, HRS):**

According to HRS Chapter 343-5, an environmental assessment shall be required for actions that propose the use of any land classified as Conservation District by the State Land Use Commission under Chapter 205. A Department of Land and Natural Resources, Office of Conservation and Coastal Lands letter dated January 8, 2015 to Mr. Ken Church, stated that:

*"In conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and HAR Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, §11-200-8(a)(1) and (5), and (sic) the proposed use is exempt".*



**Special Management Area Determination:**

According to Hawai'i Revised Statutes (HRS) Chapter 205A-22 and Planning Commission Rule 9-4(e)(2)(M) relating to Special Management Area, "*Subdivision of a parcel of land into four or fewer parcels, when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels*" may be determined by the Planning Director to be exempt from the definition of "development". We have determined that the subdivision, as proposed in SAA 15-001250, will not have a cumulative impact or significant adverse environmental or ecological effect on the SMA, and therefore, is exempt from the definition of "development", and shall require no further review against the SMA Guidelines. However, any substantive changes to the proposed subdivision map may require further review by this office and possibly the submittal of another SMA Use Permit Assessment Application. Please note that any future uses, activities or operations proposed for these parcels shall require the submittal of another Special Management Area Use Permit Assessment Application.

While further review of the proposed subdivision against the Special Management Area rules and regulations will not be required, all other applicable Zoning and Subdivision Code requirements must be satisfied. This will include compliance with Hawai'i County Code Chapter 34 Public Access. Additionally, this determination of exemption from the SMA definition of development is based on the enclosed subdivision plan, as submitted, and is subject to compliance with 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. Final subdivision approval shall be secured within two (2) years from the date of approval of this permit.
4. Future development of the proposed lots shall be subject to review against the SMA rules and regulations, including a determination of the shoreline setback line as such plans are implemented.
5. 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



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March 30, 2015  
Page 3

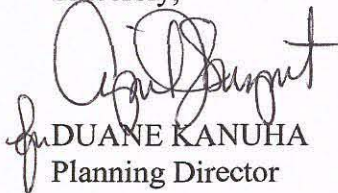
- the result of their fault or negligence;
- b) Granting of the time extension would not be contrary to the original reasons for the granting of the determination; and
  - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
6. 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.

Regarding the Basic Data Collection, Hawai'i Revised Statutes (HRS) Chapter 205-A-22 and Planning Commission Rule 9-4(e)(1)(B) state that "*Grading, removing, dredging, mining, or extraction of any materials*" is not exempt from the definition of "development". For this reason and pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No.: 15-000328 is hereby issued for the SMA approval to conduct basic data collection on the former railroad right-of-way adjacent to Parcel 29. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

A copy of the approved site plan is enclosed for reference.

If you have questions, please contact Esther Imamura of this office at (808) 961-8139.

Sincerely,



DUANE KANUHA  
Planning Director

ETI:cs  
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Enclosure: SMM No.: 15-000328  
Department of Public Works Memorandum dated February 18, 2015  
Approved Site Plan

cc w/Encls: Long Range Planning  
  
Office of Planning, DBEDT  
State of Hawai'i Department of Business, Economic  
Development & Tourism  
P.O. Box 2359  
Honolulu HI 96804-2359

DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO, HAWAII

RECEIVED  
2015 FEB 19 PM 2:29

DATE: February 18, 2015

*Memorandum*

TO: Duane Kanuha, Planning Director

FROM: *for*  Department of Public Works, Engineering Division

SUBJECT: **SMA USE PERMIT ASSESSMENT APPLICATION (SAA 15-001250)**

Applicant: Kenneth S. Church

Land Owner: Kenneth S. Church

Request: Post Signs and Conduct Basic Data Collection

Location: Wailea, South Hilo, Hawaii

Tax Map Keys: 2-9-03: 013, 029, and 060

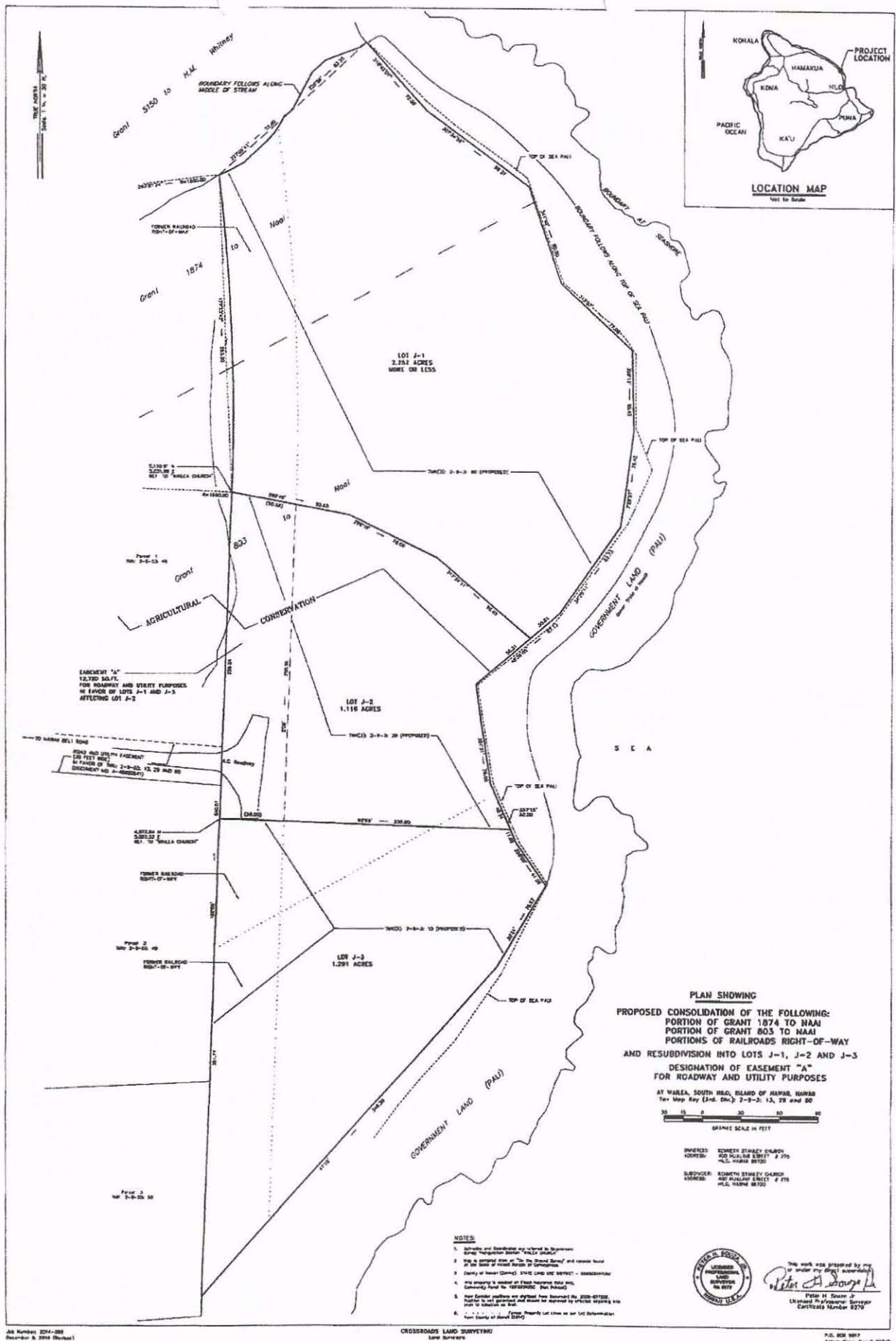
We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated February 12, 2014 and have no objections to the request.

The subject parcels are in an area that is not mapped by the Federal Emergency Management Agency and is identified as an area of "minimal tsunami inundation." The parcels, at approximate elevation of 60 feet above mean sea level, are designated as Zone X (areas determined to be outside the 500-year floodplain). The Federal Government and the County of Hawaii do not have any regulations for developments within areas of minimal tsunami inundation and Zone X.

Questions may be referred to Kelly Gomes at ext. 8327.

097055





William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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## County of Hawai'i

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### **Special Management Area Minor Permit No. 15-000328**

**Project:** Conduct Basic Data Collection  
**Applicant:** Kenneth S. Church  
**Owner:** Kenneth Stanley Church  
**Location:** Wailea, South Hilo, Hawai'i  
**TMK:** (3) 2-9-003:029 **Land Area:** 2.829 acres

#### **Applicant's Request**

**1. Project Description:**

The basic data collection will consist of 63 borings to determine the best location for a driveway to Parcel 60. It will be approximately one foot by one foot in size and go no deeper than eighteen inches below ground surface to determine the depth of the former railway roadbed. The soil and grass will be replaced over the holes after the depth of the old railway roadbed is determined.

**2. Purpose of Project:**

It will be used to determine the best location for a future driveway that will lead to Parcel 60.

**3. Project Valuation:** Less than \$50.

**4. Determination:**

Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4 (e)(1)(B), relating to Special Management Area (SMA), states that "*Grading, removing, dredging, mining, or extraction of any materials*" is defined as "development". Therefore, the proposed basic data collection is considered "development" and requires a review against the Special Management Area rules and regulations and requires an SMA Minor Permit.

#### **State and County Plans**

- 1. State Land Use District:** The project site is designated Conservation by the State Land Use Commission.
- 2. General Plan:** The project site is designated as Open by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
- 3. County Zoning:** The project site is zoned Agricultural (A-20a). However, Hawai'i Revised Statutes, Chapter 205-5(a) states that "*Except as herein provided, the powers*



*granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C."*

4. **Special Management Area:** The project site is located within the SMA and has coastal frontage. However, it is over 100 feet from the coastal pali and not located in a "shoreline area" as defined by Hawai'i Revised Statutes (HRS) Chapter 205A-41.
5. **Flood Zone:** "X"

<b>Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</b>
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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.

<b>Findings</b>
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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 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 less than \$50 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated February 18, 2015, states the following:

*"We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated February 12, 2014 (sic) and have no objections to the request.*

*The subject parcels are in an area that is not mapped by the Federal Emergency Management Agency and is identified as an area of "minimal tsunami inundation." The parcels, at approximate elevation of 60 feet above mean sea level, are designated*



*as Zone X (areas determined to be outside the 500-year floodplain). The Federal Government and the County of Hawai'i do not have any regulations for developments within areas of minimal tsunami inundation and Zone X."*

#### **Approved Uses, Activities and Operations**

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 15-000328** is hereby approved to conduct basic data collection on the former railroad right-of-way adjacent to Parcel 29, subject to the applicant's compliance with the conditions of approval as specified below.

#### **Conditions of Approval**

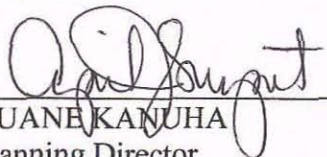
The Planning Director has approved SMA Minor Permit No. 15-000328, subject to the following conditions:

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. The basic data collection shall be completed within one (1) year from the date of approval of this permit.
4. Any further development, including but not limited to the construction of structures of any type shall require further review and approval as provided under Chapter 205A, HRS, and Rule 9, Planning Commission Rules of Practice and Procedure.
5. 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.
6. 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 determination; 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).
7. The Planning Director shall initiate procedures to revoke this determination should any of the conditions not be met or substantially complied with in a timely fashion.

If you have questions, please contact Esther Imamura of this office at (808) 961-8139.

APPROVED:

  
for DUANE KANUHA  
Planning Director

3-30-15  
Date