

COPY

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

FILE NO.: CDUA HA-3404
REF: OCCL: MC

Acceptance Date: February 13, 2007
180 Exp. Date: August 12, 2007

TO: Chairperson's Office, Department of Land and Natural Resources

REGARDING: Consolidation and Resubdivision

APPLICANT: Barbara Wilcox
85-500 Keawaiki Road
Captain Cook, HI 96704

AGENT: Gregory Mooers, Mooers Enterprises, LLC
PO Box 1101, Kamuela, HI 96743

LANDOWNER: Same as applicant

LOCATION: Kahauloa, South Kona, Hawaii

TMK: (3) 8-3-05:10, 12, & 13

AREA OF USE: 95,890 sqft

SUBZONE: General

DESCRIPTION OF AREA / CURRENT USE

The project site is on Kahauloa Bay, a residential neighborhood in the South Kona district on the southwest coast of Hawaii. The largest parcel, 5:13, is 1.44 acres occupies a peninsula that forms the southern edge of the bay. The next lot inland, parcel 12, is 0.40 acres, and the lot just mauka of this, parcel 10, is 0.36 acres. **Exhibit 1** shows the location of the subject parcels.

The lots are in the General Subzone of the State Land Use Conservation District.

Each of the lots is fully developed with single-family residences, walls, landscaping, and accessory structures. For parcel 10 The Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-2198 for a single-family residence (SFR) in 1989. For parcel 12 the Board approved CDUP HA-346 to replace a SFR in 1972. For parcel 13 the Board approved CDUP HA-106 for an addition to an existing SFR in 1970,

Hawai'i District Land Office

No comment

County of Hawai'i Planning Department

The Department has determined that the proposal does not qualify as a 'development' and that a Special Management Permit will not be needed.

Dennis D. K. Hart

Mr. Hart had concerns regarding public access, historic trails, trails, and archaeological sites on this and other unrelated but concurrent proposals. Mr. Hart requests that the developer pays for an archaeological survey of the ahupua'a by non-biased descendants. He also requests that the developer build paved mauka-makai access trails, as well as other infrastructure, prior to having this proposal be approved.

Applicant's Response

The Applicant cited a 2000 statement by Nā Ala Hele that there was no evidence of the trail prior to 1892, and that absent such evidence ownership of the trail could not be confirmed in favor of the State. Applicant also notes that the proposal does not involve any new development or ground disturbance. Applicant notes that the entire area has been graded and landscaped in the past, and that no historic artifacts are likely to remain close to the surface.

Deborah L. Chang

Ms. Chang requests that Na Ala Hele review and approve the disposition of the trail shown on the TMK maps. She also requests that the public's right to use Kahauloa Road be affirmed, as ocean access is often blocked by kayak rental companies.

Applicant's Response

Applicant cited the 2000 statement from Nā Ala Hele, as noted above. Applicant also notes that, for a CDUP on a neighboring property, the DLNR had determined that the encumbrance on the deed for a trail on that property was a private matter. Applicant also points out that the applicant is not in any way associated with the kayak rental businesses, and that the applicant will not prohibit the public from using Kahauloa Road.

ANALYSIS:

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated February 16, 2007, that:

1. The consolidation and re-subdivision was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the protective subzone, P-11 SUBDIVISION OR*

CONSOLIDATION OF PROPERTY, (C-2) Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the objectives of the subzone. Consolidation followed by a subdivision shall constitute a subdivision. The final decision as to whether to grant or deny the permits lies with the Chair of the DLNR.

2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was not required.
3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8.

§13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed consolidation and subdivision does not entail any new land use, nor will it allow for increased density. The proposal does not conflict with the objectives of the Conservation District.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

Pursuant to HAR §13-5-14 the objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban use may be premature.

The proposal does not involve a change in land use, nor will it create the potential for a change in land use.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The proposal is exempt from the definition of development, and will not need a Special Management Area permit

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The consolidation and re-subdivision does not involve a land use.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The consolidation and re-subdivision does not involve a land use.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The action shall have no physical impact on the land. Therefore staff is of the opinion that the natural beauty and open space characteristics of the portions of the lots within the Conservation District will be maintained.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposal will not result in an increase in density. The identified land uses on the three parcels will not change after the consolidation and re-subdivision.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff is of the opinion that the proposed subdivision will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

The applicants are proposing to consolidate and re-subdivide Conservation District land from three lots into three. All of the parcels lie in the Conservation District. Each of the parcels is fully developed with single-family residences, landscaping, rock walls, and accessory structures.

The lots are contiguous, with one larger parcel on the shoreline and the other two parcels inland. The proposal would result in three irregularly shaped lots, each containing one residence and having shoreline access.

The entire area is within the Kealakekua Historic District, however, the National Registry of Historic Places does not list any sites on the parcels in question.

There are no land uses being proposed with this application, and the landowners are aware that any future land uses will require a permit from the Department or Board. The proposal will not change any of the identified land uses on either parcel, nor will it result in increased density.

Lateral access along the shoreline will be maintained in accordance with state and county laws.

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Chair of the Board of Land and Natural Resources APPROVE this application subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall provide documentation (e.g. book and page or document number) that this permit approval has been placed in recordable form as a part of each deed instrument;
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 6) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 7) The applicant shall obtain the approval for the consolidation and re-subdivision through the applicable County department, and file a final consolidation and resubdivision plan with OCCL;
- 8) Other terms and conditions as may be prescribed by the Chairperson; and
- 9) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



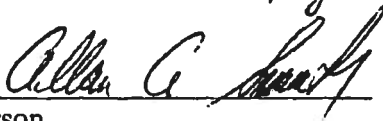
Michael Cain
Staff Planner

Under the authority of §13-5-30(a) and §13-5-33, Hawai'i Administrative Rules, this request for a Departmental Permit for CDUA OA-3404 is hereby:

Approved

Disapproved

Dated at Honolulu, Hawai'i July 20 '07



Chairperson
Board of Land and Natural Resources

cc: County of Hawai'i Planning Department
Hawai'i Land Division