

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

July 8, 2009

Mr. Roy A. Vitousek III
Cades Schutte, LLLP
75-170 Hualālai Road, Suite 303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

Subject: Special Management Area (SMA) Use Permit Assessment
Application (SAA 09-000464)
Applicant: Keith and Cynda Unger
Owner(s): McCandles Land & Cattle Company, LLC et al, Lindsey Noenoe
Marks, Elizabeth Marks Stack
Request: Construction of a Single-Family Dwelling and Access Driveway
TMK: 8-6-014:012 and 8-6-011:003, Por. Kealia 2nd to Kalahiki, South Kona, Hawai'i

This is to acknowledge receipt on June 4, 2009 of your application for the construction of a single-family dwelling and access driveway on the subject parcels.

Parcel 8-6-014:012 is 0.2 acres and parcel 8-6-011:003 is 156.192 acres. Parcel 8-6-014:012 is designated Conservation and parcel 8-6-011:003 is designated Conservation and Agriculture by the State Land Use Commission. All proposed activity is to occur in the Conservation District of the parcel. Due to the Conservation District designation, the County of Hawai'i zoning of Open and Agriculture (A-5a) do not apply. The County of Hawai'i Land Use Pattern Allocation Guide designates parcel 8-6-014:012 as Open the other as both Open and Extensive Agriculture. Parcel 8-6-014:012 is located entirely within the Special Management Area (SMA), the other parcel is partially in the SMA.

Our review of the application has identified a number of issues that will need to be addressed before we are able to process your application:

1. All landowners of both parcels involved in the proposed action must sign the application form or provide letters of approval for the proposed project. According to Real Property Tax records there are multiple entities who share

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ownership of parcel 8-6-014:012 with McCandles Land and Cattel Company, thus title documentation will also need to be provided identifying all owners of parcel. Parcel 8-6-011:003 is jointly owned by Noenoe Marks Lindsey, McCandles Land and Cattle Company, and Elizabeth Marks Stack.

2. The application provides an archaeological survey of parcel 8-6-014:012 and notes remains of several historic sites on the parcel, however no comments from State of Hawai'i Department of Land and Natural Resources (DLNR) Historic Preservation Division (SHPD) were submitted as part of the application. The comments are essential in our review of the application to ensure the appropriate preservation and mitigation measures are employed. The proposed driveway alignment was noted as not having any historic features in the application, though no mention was made of areas surrounding the proposed driveway which may be impacted by construction activities, or whether the driveway was impacted by any buffer requirements from nearby historic sites. Also, there was brief mention of the historic King's Trail as being makai of the project site and that the trail was not identifiable. The trail alignment is part of the work that should be identified and approved of during the archaeological review, once again so that we can ensure the historic trail is not being disturbed and that appropriate buffers from the trail are being implemented to protect it from the proposed construction activities. Confirmation of the location of the historic trail and all applicable buffers must be confirmed in writing by DLNR Na Ala Hele Program.
3. There are two potential zoning code and/or SMA violations on parcel 8-6-011:003, including the alleged bulldozing and destruction of part of the King's Trail and the construction of an unpermitted dwelling. Both of these violations will need to be rectified prior to the Department granting approval for other activities on the parcels.
4. The proposed driveway over parcel 8-6-011:003 cannot be considered accessory to the proposed single-family dwelling as it is located on a separate parcel. Therefore, the cost of the proposed driveway must be provided so a determination can be made as to whether it would require a SMA Major Use Permit or a SMA Minor Permit.

As a result of the above, the application is being returned to you as incomplete. When you resubmit the application, please address the following:

1. Provide written permissions from all affected parcel owners for the proposed work;
2. Submit comments from SHPD and Na Ala Hele Program regarding preservation or buffer requirements for any historic sites, including the King's Trail, that may be impacted by the proposed activities;
3. Provide a written cost estimate from a licensed contractor for the proposed driveway installation on parcel 8-6-011:003;

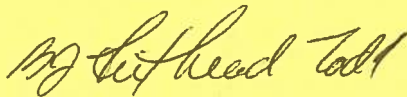
Mr. Roy A. Vitousek
Cades Schutte, LLLP
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4. Provide sufficient evidence that corrective actions have been completed from pending notice of violations from either the County or State of Hawai'i.
5. Given that the certified shoreline survey expired on June 19, 2009, we will honor the survey for the resubmittal of the application, provided the application is resubmitted to the Planning Department no later than three (3) months from the date of this letter.

Finally, we would also like to express at this point our general concern with the suitability of this location for a single-family dwelling. The site is in close proximity to various hazards including flood zones and tsunami inundation zones. While the applicant feels confident that these hazards will not affect them, the reality is that the proximity of the shoreline to the building site, and the propensity for hazards in this area, mean the likelihood of being impacted by one of these hazards during the expected 50 year life of the dwelling is high. This ultimately puts first responders in hazards way unnecessarily. A resubmittal of the application will need to discuss this potential impact of natural hazards in further detail.

Should you have questions, please feel free to contact Dana Okano of this office at 961-8288.

Sincerely,



BJ LEITHEAD TODD
Planning Director

DO:cs

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Enclosure: Original SMA Assessment Application

xc ltr only: Long Range Planning
Planning Department, Kona
Mr. Randy Lovato, Kona Planning

Department of Land and Natural Resources
Office of Conservation and Coastal Lands
PO Box 621
Honolulu, HI 96809

Mr. Roy A. Vitousek
Cades Schutte, LLLP
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July 8, 2009

Department of Land and Natural Resources
State Historic Preservation Division
40 Po'okela Street
Hilo, HI 96720

Department of Land and Natural Resources
Na Ala Hele Program
19 E. Kawaii Street
Hilo, HI 96720

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SAA-09-000464

June 2, 2009

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@ca des.com

Bobby Jean Leithead-Todd, Director
Planning Department
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Re: Request for SMA Permit Exemption
Property: TMK No. (3) 8-6-014: 012 and 8-6-011: 003
Owner: McCandless Land & Cattle Company, LLC

Dear Ms. Leithead-Todd:

This office represents Keith and Cynda Unger in obtaining necessary permits to build a single-family residence on an oceanfront *kuleana* lot that is in a fairly remote location, surrounded by McCandless Ranch property in the Kalahiki ahupua`a. The *kuleana* lot is owned by McCandless Land & Cattle Co., LLC ("McCandless Ranch"); Cynda Unger is a member of McCandless Land & Cattle Co., LLC. The purpose of this letter is to request, pursuant to Planning Commission ("PC") Rule 9-13, an exemption from PC Rule 9, Section 9-4(10)B.

Enclosed are a Special Management Area Use Permit Assessment Application (SMAA) form and a copy of the Draft Environmental Assessment for this property that was performed by Ron Terry, Ph.D., of Geometrician Associates LLC and is being submitted as part of the Conservation District Use Permit for this single family residence. McCandless submits that the Draft EA is a comprehensive statement of the proposed project and details the information required in the SMAA review process.

As discussed in and incorporated as an exhibit to the Draft EA, a thorough Cultural Impact Assessment was performed by Rechtman Consulting, LLC, in which it was determined that TMK 8-6-014: 012 is a *kuleana* lot, having been awarded to Auae in 1847 as LC Aw. 9746C and historically was used as a house lot. The proposed project is construction of a single-family beach residence on the *kuleana* parcel. The addition of a graded 250-foot driveway across land belonging to McCandless Ranch (TMK 8-6-11: 003) from an existing private McCandless Ranch road to the *kuleana* parcel is an accessory use of the single-family residence. *Kuleana* uses, including residential use, are permitted in the State Land Use Conservation District under HRS Section 183c-5. Because the proposed project is a single-family residence, it would not be

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Bobby Jean Leithead-Todd, Director

June 2, 2009

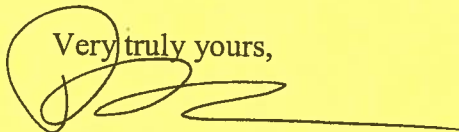
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considered "development" as that term is defined in PC Rule 9-4(10)B.

For the above reasons, it is respectfully requested that the Director make a finding that this project is exempt from an SMA Permit.

If you have questions or require additional information, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be "Roy A. Vitousek III", written over the closing "Very truly yours,". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:bah

Encl.

cc : Margaret Masunaga, West Hawaii Planning Office

2009 JUN -4 PM 3:10

SAA-09-000464

June 2, 2009

Roy A. Vitousek III
 Direct Line: (808) 329-5811
 Direct Fax: (808) 326-1175
 E-mail: rvitousek@cades.com

Bobby Jean Leithead-Todd, Director
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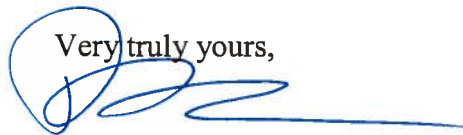
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Very truly yours,



Roy A. Vitousek III

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Encl.

cc : Margaret Masunaga, West Hawaii Planning Office