

William P. Kenoi  
Mayor



8-6-11:3

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

October 21, 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 Use Permit Assessment Application (SAA 09-000490)  
Special Management Area Minot Permit (SMM 09-000130)  
**Applicant:** Keith and Cynda Unger  
**Landowner:** Keith and Cynda Unger, McCandles Land & Cattle Company, LLC  
**Request:** Construct a Single-Family Residence on Parcel 8-6-014:012 and Grade  
an Access Driveway Across Parcel 8-6-011:003  
**TMK:** 8-6-014:012 & 8-6-011:003, Por. Kealia 2<sup>nd</sup> to Kalahiki, South Kona, Hawai'i

This is to acknowledge receipt on September 21, 2009 your resubmittal of the Special Management Area (SMA) Use Permit Assessment Application for the construction of a single-family residence on parcel 8-6-014:012 and the grading of a 250-foot access driveway across parcel 8-6-011:003. Also acknowledged are letters from Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD) dated September 21, 2009, Na Ala Hele (NAH) dated August 13, 2009, and National Park Service dated September 4, 2009.

Parcel 8-6-014:012 is in located in the State Land Use Conservation district and is designated Open by the County Land Use Pattern Allocation Guide Map. According to Hawai'i Revised Statutes (HRS) 205 5(a), County zoning is not applicable due to the State Land Use Conservation District designation. The parcel is within the SMA and has frontage along the shoreline. The portion of parcel 8-6-011:003 pertaining to this SMA Assessment Application is also located in the State Land Use Conservation district and designated as Open and Extensive Agriculture by the County Land Use Pattern Allocation Guide Map. The relevant portion of this parcel is located within the SMA.

OCT 21 2009

According to Planning Commission Rules of Practice and Procedure (PC Rule), Rule 9-4(10)B(i) "development" does not include "*Construction of a single-family residence that is not part of a larger development.*" Therefore, we have determined that the proposed construction of the single-family residence is exempt from the definition of "development."

However, the grading of an access driveway across parcel 8-6-011:003 is not considered accessory as it occurs on a neighboring parcel and according to PC Rule 9-4(10)A(ii), "*Grading, removing, dredging, mining, or extraction of any materials*" is not exempt from the definition of development. Therefore, the grading of the access driveway on parcel 8-6-011:003 requires either a Special Management Area (SMA) Minor Permit or a SMA Major Use Permit. On August 19, 2009 you provided a cost estimate via email for the proposed driveway to be approximately \$1,200. Therefore, we have determined that a Special Management Area Minor Permit is required.

For this reason and pursuant to Planning Commission Rule No. 9-10(E), Special Management Area Minor Permit No. 09-000130 is hereby issued to allow for the grading of the access driveway through parcel 8-6-011:003 to the mauka (inland) side of kuleana parcel 8-6-014:012 as proposed in your application. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

According to PC Rule 9-10G, "*The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a substantial adverse effect on the Special Management Area.*" This determination of exemption from the SMA definition of development for construction of the single-family residence 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 comply with all applicable requirements of all Federal, State and County of Hawaii departments and agencies.
3. The Building Permit for the proposed single-family dwelling shall be secured within two (2) years from the date of approval of this permit.
4. A minimum 40-foot shoreline setback from the certified shoreline is required.
5. A construction barrier, meeting with the approval of the Planning Director, shall be erected mauka of the 40-foot shoreline setback line prior to the commencement of construction activities and shall remain in place until final inspection has been granted for the improvements.
6. No construction activities, including, but not limited to, the stockpiling of construction materials, rubbish or debris, or the use of mechanized equipment, shall occur within the 40-foot shoreline setback area without further SMA review.

7. 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.
8. The construction barrier must be shown and properly noted on the building and/or site 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 makai of this construction barrier."
9. Written approval of an archeological monitoring plan for the project site must be provided by DLNR SHPD prior to any land altering or construction activities commencing.
10. Lateral Shoreline Public Access shall not be impeded within the 40-foot shoreline setback area by use of landscaping, fencing or other materials.
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 PC Rule 9-11.1 and Section 205A-71(b), Hawaii Revised Statutes.
12. 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).
13. 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.

Mr. Roy A. Vitousek III  
Cades Schutte LLLP  
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October 21, 2009

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

Sincerely,



BJ LEITHEAD TODD  
Planning Director

DO:cs

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Enlosure      SMM 09-000130  
Department of Public Works Memo dated October 5, 2009

xc:              Long Range Planning Division  
                  Planning, Kona Office  
                  Mr. Norman Hayashi, Planning Division

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
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### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
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### Special Management Area Minor Permit No. 09-0000130

**Project:** Grading of an Access Driveway to a Neighboring Parcel  
**Applicant:** Keith and Cynda Unger  
**Location:** Por. Kealia 2<sup>nd</sup> to Kalahiki, South Kona, Hawai'i  
**TMKs:** 8-6-011:003 Acres: 156.192

#### Applicant's Request

**1. Project Description:**

The applicant proposes to grade a 250-foot access driveway connecting an existing 4-wheel drive road to the mauka end of kuleana parcel 8-6-014:012.

**2. Purpose of Project:**

The purpose of this project is to create an access driveway from a single-family residence on parcel 8-6-014:012 that connects with an existing 4-wheel drive ranch road on the subject parcel. The proposal is to use a mauka (inland) alignment for the driveway so as to avoid the existing "Old Road" designated on the TMK map. The "Old Road" may be an historic site and may have historic features. In addition, the "Old Road" is makai (seaward) of the shoreline near the project area. The grading and use of a mauka driveway alignment avoids impacts to potential resources makai of the kuleana parcel.

**3. Project Valuation:** \$1,200.

**4. Determination:**

According to Chapter 205A-22, Hawaii Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4(10)A(ii) relating to the Special Management Area, "Grading, removing, dredging, mining, or extraction of any materials," is considered "development". Therefore, the proposed project requires a SMA Minor Permit for the grading of an access driveway on parcel 8-6-011:003.

## State and County Plans

1. **State Land Use District:** Conservation.
2. **General Plan:** Open and Extensive Agriculture.
3. **County Zoning:** Not applicable.
4. **Special Management Area (SMA):** The parcel is partially located in the SMA.
5. **Flood Zone:** Flood Zone X.

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

There are archaeological features with the project area and State of Hawai'i Department of Land and Natural Resources State Historic Preservation Division (SHPD) has agreed to allow the grading of the proposed access driveway provided that an archaeological monitoring plan be prepared for their approval. This requirement of SHPD will be made a condition that this permit is subject to for compliance.

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 Hawaii 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 development is consistent with the Hawaii 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 approximately \$1,200 is not in excess of \$125,000.

The enclosed Department of Public Works memorandum dated October 5, 2009, 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 Zone "X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).*

*The above information is based on the most recent FIRM for the County of Hawai'i. Zone "X" is not a designated Special Flood Hazard Area. A Zone "X" designation does not imply that the referenced property will be free from flooding or flood damage. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map. Should a watercourse affect the property, it shall not be altered without first obtaining approval from DPW and a grading permit. A flood study may be required under Chapter 27 of Hawai'i County Code for watercourse alterations."*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 09-000130** is hereby approved for the grading of an access driveway on the subject parcel. This approval is 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. 09-000130** 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. All activities related to the permit must be completed within two (2) years from the date of this permit. The applicant shall immediately notify the Planning Department, in writing, upon the completion of the grading activities.
4. A construction barrier, meeting with the approval of the Planning Director, shall be erected mauka of the 40-foot shoreline setback line prior to the commencement of construction activities and shall remain in place until final inspection has been granted for the improvements.
5. Written approval of an archeological monitoring plan for the project site must be provided by DLNR SHPD prior to any land altering or construction activities commencing.
6. 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

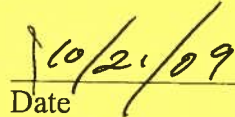


project toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b), Hawaii Revised Statutes.

7. 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).
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:

  
\_\_\_\_\_  
BJ LEITHEAD TODD  
Planning Director


  
\_\_\_\_\_  
Date

DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO, HAWAII

DATE: October 5, 2009

## Memorandum

**TO :** BJ Leithead Todd, Planning Director  
Planning Department

**FROM :** Galen M. Kuba, Division Chief   
Engineering Division

**SUBJECT :** Special Management Area Use Permit  
Assessment Application (SAA 09-000490)  
Applicant: Keith and Cynda Unger  
Location: Kealia 2<sup>nd</sup> to Kalahiki, South Kona, HI  
TMK: 3 / 8-6-014:012 and 8-6-011:Por 003

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

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

The above information is based on the most recent FIRM for the County of Hawaii. Zone "X" is not a designated Special Flood Hazard Area. A Zone "X" designation does not imply that the referenced property will be free from flooding or flood damage. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map. Should a watercourse affect the property, it shall not be altered without first obtaining approval from DPW and a grading permit. A flood study may be required under Chapter 27 of Hawaii County Code for watercourse alterations.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.

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copy: ENG-HILO/KONA