

CERTIFIED MAIL

December 8, 1993

Mr. Michael O'Friel  
RR1 Box 4235  
Pahoa, HI 96778

Dear Mr. O'Friel:

Special Management Area (SMA) Minor Permit No. 93-22  
Applicant: Michael O'Friel  
Proposed Six (6) Lot Subdivision  
TMK: 1-3-2:10; Kamaili, Puna, Hawaii

Pursuant to our letter dated November 24, 1993, we had determined that a Special Management Area (SMA) Minor Permit is required for the proposed six-lot subdivision and related improvements of the subject property. Accordingly, based on the following background and findings, we hereby issue SMA Minor Permit No. 93-22 with conditions.

BACKGROUND

1. Mr. Michael O'Friel is requesting a Special Management Area (SMA) Minor Permit to allow the subdivision of a 29.182 acre parcel into six (6) new lots with related improvements. The property is located on the mauka side of the Kapoho-Kalapana Road at Kamaili, Puna, Hawaii TMK: 1-3-2:10.
2. The applicant proposes to subdivide the subject parcel into the following new lots:
  - Lot 1 - 10.081 acres
  - Lot 2 - 6.101 acres
  - Lot 3 - 4.000 acres
  - Lot 4 - 3.000 acres
  - Lot 5 - 3.000 acres
  - Lot 6 - 3.000 acres

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The proposed subdivision would require the creation two (2) common roadway access easements from the Kapoho-Kalapana Road. One common easement would provide access for Lots 1 through 4 and the second easement for Lots 5 and 6. Site improvements include grading and paving the common access easements with 20 feet wide by 50 feet deep asphalt/concrete apron.

3. According to the applicant, the proposed subdivision is by order of the court to allow the holders of undivided interests in the property to receive title to separate parcels. The Order on Motion for Partition (Civil No. 9895) in the Third Circuit Court dated October 7, 1991, states that the subject parcel will be partitioned in kind to the holders of interest. Further, the applicant is primarily responsible to submit the subdivision plan to the Planning Department and to secure the subdivision.

Subsequently, Court's Order on Motion by Clara Kakalia to Amend Order on Motion for Partition (Civil No. 9895) dated July 26, 1993, states the following:

- "1. The survey map (attached hereto as Exhibit 'A') and metes and bounds description (Exhibit 'B') prepared by surveyor Blaine Ito for Parcel Second (referred to therein as 'Parcel 10') (TMK(3)1-3-02-10) are approved subject to State of Hawaii's Final Approval."
- "2. Exhibit 'A' also shows the proposed subdivision of Parcel Second as has been previously ordered by this Court. This proposed subdivision is also approved subject to Final Approval by County & State of Hawaii. All objections of any party to this proceeding have been resolved and the County of Hawaii Planning Department is requested to proceed with processing all matters necessary to its final approval, including the SMA application."

#### STATE AND COUNTY PLANS

4. The State Land Use District classification is Agriculture. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Orchards. The County Zoning designation is Agricultural- 1 acre (A-1a) for the major portion of the property and Agricultural- 10 acre (A-10a) for the remaining area.
5. Portion of the subject parcel is located within the Special Management Area. The proposed site improvements require an SMA Permit.

#### **DESCRIPTION OF THE PROJECT SITE AND SURROUNDING AREA**

6. The subject parcel is a 29.182 acre parcel and is situated over 200 feet from the shoreline. Portion of the property contains a single family residence, a generator shed and a storage shed.
7. Soils are classified as Malama extremely stony muck for the major portion of the parcel and Opihikao extremely rocky muck for a small portion at the southwest border.
8. The area of the proposed site improvements consist of hala and guava trees. It is not known to be inhabited by rare or endangered species of plant or animals.
9. An Archaeological Inventory Survey conducted in 1992 revealed three (3) historic sites. At this time, these sites are considered as significant for their information content. The survey concluded that "At such time as a future owner applies for a grading, grubbing or building permit, test pits should be excavated to make a final determination as to these sites' significance."
10. According to the Flood Insurance Rate Map (FIRM), prepared by the Federal Emergency Management Agency, the project site is determined to be in an area with minimal tsunami inundation.
11. Surrounding lands to the north and south are similar zoned as Agricultural. The properties makai of the Kapoho-Kalapana Road are zoned Open and situated within the State Land Use Conservation District. Surrounding land uses include single family residences and vacant lands.

#### **PUBLIC UTILITIES AND SERVICES**

12. Access to the property is from the 50-foot wide Kapoho-Kalapana Road which has a 12-18 foot wide pavement.
13. Water, wastewater and other essential utilities and services are not available to the property.

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### AGENCIES' - COMMENTS

14. State Department of Land and Natural Resources, Historic Preservation Division:

"We find that the survey most likely located all the historic sites in the parcel, totalling 3 sites. Insufficient information has been gathered to evaluate the significance of these sites, since Barrera, himself, clearly states that he is unsure if they are man-made and states that testing is needed to determine significance (p.4). If these are historic sites, they seem to have been small agricultural features. Age is unknown."

"Since you are not proposing any land alteration in the area for subdivision and since the lot owners have no immediate development plans, we believe that a 'no adverse effect' determination can be given if the following condition is attached to subdivision approval.

A) The three possible historic sites shall be preserved. B) If land alteration in their vicinity is planned, the significance of the sites must be established by means of a completed archaeological inventory survey by a professional archaeologist. C) A report shall be submitted to the State's Historic Preservation Division for review and acceptance of the significance evaluations. D) If the sites prove to be significant, then prior to any land alteration in their vicinity, an acceptable mitigation plan must be developed and approved by the State Historic Preservation Division and the County of Hawaii Planning Department. The plan must then be executed, and these two offices must verify its successful execution, prior to land alteration in the immediate vicinity."

15. County Department of Public Works, Engineering Division:

(SEE ATTACHMENT NOVEMBER 3, 1993 LETTER)

### FINDINGS AND DETERMINATION

Upon review of the request against the guidelines for granting a Special Management Area Permit, the Planning Director hereby approves a Special Management Area Minor Permit based on the following findings:

The purpose of Chapter 205A, HRS, and Planning Commission Rule No. 9, Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect and, where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The total valuation of the project will not exceed \$125,000; and the proposal will not result in a significant adverse effect on the Special Management Area.

The proposed action is consistent with the Objectives, Policies and SMA Guidelines which were established to provide guidance for the preservation, protection, and development of coastal resources of the State and County. They identify several areas of management concern including historic, recreation, scenic resources, coastal ecosystems, economic use, and coastal hazards.

Three historic sites have been identified and will be preserved at this point in time. The proposed site improvements will not affect these areas. However, a condition of this permit will be that prior to any land alteration in the vicinity of these historic sites by the landowners, a completed archaeological inventory survey and mitigation plan (if necessary) shall be developed and accepted by the State Historic Preservation Division and the Planning Department.

The proposed site improvements are part of the subdivision requirements. The nature of the proposed improvements are not anticipated to interfere with public access to shoreline areas or existing view planes as the property is located mauka of a government coastal road and is over 200 feet from the shoreline.

Given the limited nature of the proposed improvements, approval of this request would allow for a reasonable use of the land which would not affect shoreline views, public access, and the environment or ecology of the shoreline area.

The six-lot subdivision is consistent with the County's agricultural zoned district and the General Plan Orchards designation.

Based on the above findings, the limited nature of the project and given the proposed conditions, it is determined that the granting of this request will not impact the identified resources. Therefore, the granting of this request will not be contrary to the purpose and intent of Chapter 205A, HRS, relating to Coastal Zone Management; Rule No. 9 of the

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Planning Commission relating to the Special Management Area; the Hawaii County Zoning Code; or the General Plan.

A Special Management Area Minor Permit is further approved subject to the following conditions:

1. The applicant, successors, or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury and death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. The applicant shall secure Final Subdivision Approval within one year from tentative subdivision approval.
4. Prior to any grading, grubbing or building permit in the vicinity of these historic sites, a completed archaeological inventory survey and mitigation plan (if necessary) shall be developed and accepted by the State Historic Preservation Division and the Planning Department.
5. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon a archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.
6. An initial extension of time for the performance of conditions within this permit 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

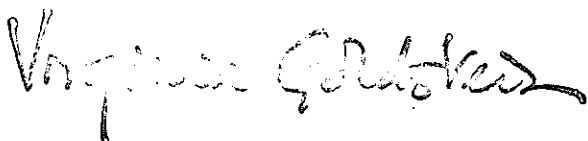
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not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

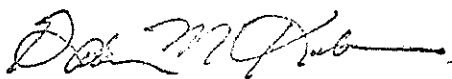
Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

Should you have any questions, please feel free to contact Alice Kawaha of this office at 961-8288.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director



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Chief Engineer

Date

AGK  
Attachments

xc: Ms. Donna Kiyosaki, Chief Engineer  
Planning Commission

bcc: SMA Section  
Subd 82-5 (via Ed)