

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

January 10, 2008

Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
P. O. Box 1101  
Kamuela HI 96743

Dear Mr. Mooers:

**SUBJECT: Special Management Area Minor Permit No. 07-000051 (SMM 07-000051)**  
**Applicant: Dan McKinley & Frank Foti**  
**Land Owner: Kiowai Hui, LLC & Foti Alae Property, LLC**  
**Request: Amendment to Conditions No. 3 and No. 7**  
**TMK: 8-7-5:1-2 and 10-19, Alae 1<sup>st</sup> & 2<sup>nd</sup>, South Kona, Hawaii**

This is to follow up on our April 24, 2007 meeting which included your client, Mr. Frank Foti. We sincerely apologize for the delay of this letter.

At the April 24, 2007 meeting, the requirement to provide public vehicular mauka-makai access and public parking was reexamined. Discussion included the steepness of the pali and the numerous archaeological sites within the area.

In view of the foregoing and after further evaluation, we have determined that public vehicular access and parking will not be required.

However, by enclosed letter dated October 31, 2006, Na Ala Hele stated that a makai trail, owned by the State of Hawaii and referred to as the "King's Trail", traverses through the makai portion of the subject area. This makai trail is part of the National Historic Trail known as the "Ala Kahakai". A copy of the required "Revised Preliminary" map dated November 21, 2007 for the pending subdivision, Sub-06-000435, which denoted the location of the King's Trail was forwarded to Ms. Doris Moana Rowland, Na Ala Hele Abstractor on December 4, 2007 for her review.

Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
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January 10, 2008

Therefore, in view of the foregoing and the delay in our response, we have amended Conditions No. 3 and No. 7 of SMM 07-000051 as follows:

3. A public access plan for the subject properties shall be submitted to the Planning Director for approval not more than two years after the granting of this permit. It shall include the following:
  - a. A continuously traversable minimum 10-foot wide mauka-makai pedestrian access easement along the existing jeep road or as otherwise mutually agreed upon.
  - b. In consultation with the Na Ala Hele Statewide Trail and Access System and the Ala Kahakai National Historic Trails, the applicant shall establish the alignment of the historical coastal trail and create a pedestrian easement of not less than 10 feet in width.
  - c. Applicant shall comply with the decision and order of the Third Circuit Court of the State of Hawaii in Civil No. 5473 granting license to all of the identified Defendants access to the ocean over the existing mauka-makai access road that traverses the applicable properties from north to south approximately half way between Mamalahoa Highway and the shoreline.

Approval of the public access plan shall be required prior to granting of final approval of the proposed consolidation and resubdivision.

7. All site plans submitted to the Planning Department for any future land use permits or development on the applicable resultant lots shall include the locations of the mauka-makai and the public lateral shoreline pedestrian access easements.

If you have questions, please feel free to contact Esther Imamura of this office at 961-8288, extension 257.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

ETI:cd

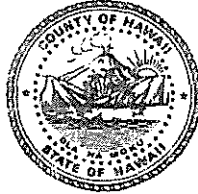
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Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
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January 10, 2008

Enclosure

xc: Ms. Mary Lou Kobayashi, Acting Director – Office of Planning, DBED&T  
Mr. Samuel J. Lemmo, Administrator – DLNR, Office of Conservation & Coastal Lands  
Long Range Planning Division  
Mr. Norman Hayashi, Planning Commission  
Mr. Daryn Arai, Ministerial Division  
Planning Department - Kona

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Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

Esther

March 19 2007

Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
P. O. Box 1101  
Kamuela HI 96743

Dear Mr. Mooers:

**SUBJECT: Special Management Area Use Permit Assessment Application (SAA 07-000230)**  
**Special Management Area Minor Permit No. 07-000051**  
**Applicant: Dan McKinley & Frank Foti**  
**Land Owner: Kiowai Hui, LLC & Foti Alae Property, LLC**  
**Request: Consolidation and Resubdivision of Twelve (12) Lots into Twelve (12) Lots**  
**TMK: 8-7-5:1-2 and 10-19, Alae 1<sup>st</sup> & 2<sup>nd</sup>, South Kona, Hawaii**

This is to follow up on our February 15, 2007 letter relating to the above-referenced Special Management Area Use Permit Assessment for the consolidation and resubdivision of twelve (12) lots into twelve (12) lots.

These parcels are zoned Agricultural (A-5a) by the County. The State Land Use Commission's designation is Agricultural and Conservation.

Although the consolidation and resubdivision of twelve (12) lots into twelve (12) lots is not considered development, Planning Commission Rule 9-4(10)D, relating to Special Management Area states that *"Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as 'development' for the purpose of this rule."*

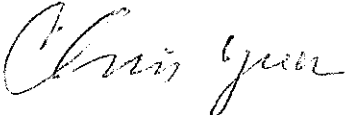
Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
Page 2  
March 19, 2007

The requirement to provide public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, will have a cumulative impact and ecological effect on the parcels. This requirement, included as a condition of final consolidation and resubdivision approval, is considered 'development'. However, it is anticipated that the cost of infrastructural improvements, if required, will not exceed \$125,000 in valuation and will not have a significant adverse impact to coastal resources. Therefore, pursuant to Planning Commission Rule 9-10(E), Special Management Area Minor Permit No. 07-000051 is hereby issued to allow for the consolidation and resubdivision of twelve (12) lots into twelve (12) lots, subject to the applicant's compliance with the conditions of approval as specified in the permit.

Please note, however, that issuance of SMM 07-000051 does not imply tacit approval of the proposed consolidation and resubdivision project. All applicable Zoning and Subdivision Code requirements must also be satisfied.

Should you have questions, please feel free to contact Esther Imamura of this department at 961-8288, extension 257.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

ETI:cd

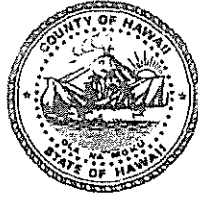
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Encl: SMM No. 07-000051

xc w/encl: Ms. Esther Imamura, Long Range Planning Division  
Mr. Norman Hayashi, Planning Commission  
Mr. Daryn Arai, Ministerial Division

xc ltr only: Ms. Laura H. Thielen, Director – Office of Planning, DBED&T (enclosure to be emailed with semimonthly report)

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**Special Management Area Minor Permit No. 07-000051**

**Project:** Consolidation and Resubdivision of Twelve (12) Lots into Twelve (12) Lots  
**Applicant:** Dan McKinley & Frank Foti  
**Land Owner:** Kiowai Hui, LLC & Foti Alae Property, LLC  
**Location:** Alae 1<sup>st</sup> & 2<sup>nd</sup>, South Kona, Hawaii  
**TMK:** 8-7-5:01 (.93 acre); 8-7-5:02 (54 acres); 8-7-5:10 (.4203 acre)  
8-7-5:11 (15 acres); 8-7-5:12 (15 acres); 8-7-5:13 (8.965 acres)  
8-7-5:14 (31 acres); 8-7-5:15 (.1206 acre); 8-7-5:16 (.0978 acre)  
8-7-5:17 (.0944 acre); 8-7-5:18 (.1419 acre); 8-7-5:19 (.2 acre)

**Applicant's Request**

**1. Project Description:**

The applicant proposes to consolidate and resubdivide twelve (12) lots into twelve (12) lots.

**2. Purpose of Project:**

From nine lots previously located entirely or partially in the SMA, the new configuration will result in only three or four lots partially in the SMA. However, only two lots will have ocean frontage. The new configuration will also change the number of lots within the State Land Use Conservation District from nine to only two partially within the Conservation District.

**3. Project Valuation:** None, according to the applicant. However, the requirement to provide public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, may require some infrastructural improvements, but anticipated to be less than \$125,000.

**4. Determination:**

According to Chapter 205A-22, HRS and Planning Commission Rule 9-4(10)A(iii) relating to the Special Management Area, "development" includes "*Change in the density or intensity of use of land, including but not limited to the division or subdivision of land*".

Further, according to Planning Commission Rule No. 9-4(10)(D), "*Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a*

*significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as 'development' for the purpose of this rule".*

A public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, meeting with the approval of the Planning Director, will be required prior to the granting of final consolidation and resubdivision approval. In consultation with the Na Ala Hele Statewide Trail and Access System and the Ala Kahakai National Historic Trails, the applicant shall establish the alignment of the historical coastal trail and create a pedestrian easement of not less than 10 feet in width from the property's northern to southern property lines, and align the southern terminus with the 10-foot wide pedestrian access on the adjoining property, TMK: 8-7-7:8.

This public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, will have a cumulative impact and ecological effect on the parcels. Therefore, the proposed consolidation and resubdivision of these lots requires a SMA Minor Permit.

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

1. **State Land Use District:** The parcels are designated Agricultural and Conservation by the State Land Use Commission.
2. **General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcels as Extensive Agriculture and Open.
3. **County Zoning:** The parcels are zoned Agricultural (A-5a).
4. **Special Management Area (SMA):** Nine lots are entirely or partially in the SMA.
5. **Flood Zone:** According to the Flood Insurance Rate Map (FIRM), a portion of Parcel 2 is located within Flood Zone "VE". A copy of the Department of Public Works, Engineering Division memorandum dated February 27, 2007 is enclosed.

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

Public access imposed to enhance access to shoreline for recreational purposes. There are existing unimproved roads that currently provide public access to and along the shoreline.

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 205-A, 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 ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. In that ten of the lots will be situated a significant distance from the shoreline, we have determined that the proposed consolidation and resubdivision of these lots will not have a substantial adverse effect on the environment.

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.

Although there is no project cost for the consolidation and resubdivision of the twelve (12) lots, the requirement to provide public vehicular mauka-makai and public lateral shoreline pedestrian access, including public parking, may require some infrastructural improvements.

By memorandum dated February 27, 2007, the Department of Public Works – Engineering Division had the following comments regarding the subject application:

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

*We have determined that a portion of parcel 2 is located within Flood Zone ‘VE’ according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).*

*Any new construction or substantial improvements within the subject property will be subject to the requirements of Chapter 27 – Flood control, of the Hawaii County Code.”*

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 07-000051** is hereby approved to allow for the consolidation and resubdivision of twelve (12) lots into twelve (12), subject to the applicant’s compliance with the conditions of approval as specified below.

## Conditions of Approval

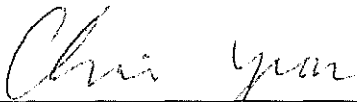
The Planning Director has approved **SMA Minor Permit No. 07-000051** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of other affected Federal, State and County agencies.
3. The applicant shall develop a public access plan for the subject properties that provides, at a minimum, continuous traversable vehicular mauka-makai and 10-foot wide lateral shoreline pedestrian accesses, including public parking, along the existing coastal jeep road or as otherwise mutually agreed upon. This plan shall be submitted to the Planning Director for approval not more than one year after the granting of this permit. Approval of the public access plan shall be

required prior to granting of final approval of the proposed consolidation and resubdivision. These access easements shall be delineated on the final plat map.

4. Applicant shall submit a written estimate(s) provided by a contractor(s) licensed to do business in the State of Hawaii for all construction activities required prior to the granting of final consolidation and resubdivision approval to confirm that the total project valuation (exclusive of land costs) is not in excess of \$125,000. In the event the total valuation of the proposed consolidation and resubdivision does exceed \$125,000, this Special Management Area Minor Permit shall be deemed null and void and the applicant shall be required to secure approval of a Special Management Area (Major) Use Permit from the Planning Commission.
5. Final consolidation and resubdivision approval shall be secured within two (2) years from the date of approval of this permit.
6. Any further subdivision or consolidation and resubdivision of the lots resulting from the proposed 12-lot consolidation and resubdivision shall constitute a cumulative impact on the SMA and require a Special Management Area (Major) Use Permit.
7. All site plans submitted to the Planning Department for any future land use permits or development on the applicable resultant lots shall include the location of the public vehicular mauka-makai and public lateral shoreline pedestrian access easements, including public parking.
8. Future development of the proposed lots shall be subject to review against the SMA guidelines as such plans are implemented.
9. 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).
10. 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:



CHRISTOPHER J. YUEN  
Planning Director

MAR 21 2007

Date

PLANNING DEPARTMENT  
COUNTY OF HAWAII

DEPARTMENT OF PUBLIC WORKS  
COUNTY OF HAWAII  
HILO, HAWAII

DATE: February 27, 2007

## Memorandum

**TO :** Christopher J. Yuen, Planning Director  
Planning Department

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

**SUBJECT :** Special Management Area Use Permit  
Assessment Application (SAA 07-000230)  
Applicant: Dan McKinley & Frank Foti  
Location: Alae 1<sup>st</sup> & 2<sup>nd</sup>, South Kona, Hawaii  
TMK: 3 / 8-7-005:001-002 & 010-019

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

We have determined that a portion of parcel 2 is located within Flood Zone VE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

Any new construction or substantial improvements within the subject property will be subject to the requirements of Chapter 27 - Flood Control, of the Hawaii County Code.

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

KE  
copy: ENG-HILO/KONA  
PLNG-HILO—