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October 8, 1991

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PLANNING DEPT
COUNTY OF HAWAII

Norman K. Hayashi
Planning Director
Planning Department
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Lawrence Capellas
Deputy Chief Engineer
Department of Public Works
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Michael Matsukawa
Corporation Counsel
Office of Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Re: Consolidation/Subdivision Application No. 90-20;
TMK No. 8-1-09:03

Dear Messrs. Hayashi, Capellas and Matsukawa:

During my last conversation with Mr. Capellas, I indicated that we would submit this proposal for resolving the issues in the above-referenced consolidation/resubdivision application. On behalf of the applicants, I ask that you review this, that we schedule a conference to discuss the proposal, and that the County render a final decision in this matter. For your ease of reference, I have enclosed the Department of Public Works' September 7, 1990 revised comments and will address each one as part of our response and proposal.

1. Comment 1. Except for Comment 1b, the remainder of the comment is acceptable. As you are aware, the property has been subjected to inundation created by upstream development and diversion, including diversion created or allowed by the County. While the Smiths may be willing to encumber the property with a drainage easement, their willingness to do so is dependent upon the County's plan or solution for the existing problem.

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If intersection improvements for Mamalahoa Highway-Napoopoo Road will be required of the Royal Coast Development Company, such improvements should be designed to handle the mauka run-off. The Smiths' drainage easement would, under such circumstances, involve only the natural run-off which can be expected.

If such intersection improvements are not required or built, the Smiths would be willing to negotiate an agreement with the County to allow the County to construct and maintain a dry well on their property, provided that the minimum flow possible is directed to the dry well and no additional flow from mauka developments are permitted. In the event the dry well is found to be inadequate, the excess flow shall also be diverted to another location off site.

2. Comment 2. This is acceptable.

3. Comment 3. We believe this item is negotiable. However, we note that questions to the County as to whether other owners of property abutting Kaawaloa were in fact required to provide similar setbacks in their consolidation/resubdivision actions remain unanswered.

4. Comment 4. The Smiths are presently uncertain as to the history of the Napoopoo Road right-of-way and its relation to the construction of the structure during the 1920s. We would appreciate some clarification of this issue before the Smiths can comment upon this proposed condition.

5. Comment 5. You are all aware of our position on why this requirement is inappropriate under the circumstances. However, in order to assure the County that road improvements will be constructed when the parcels are used for residential purposes, the Smiths are willing to resolve this issue by offering to execute covenants to improve the access to a 12 foot wide pavement (on either the internal access or Kaawaloa Road) to provide access to any dwelling constructed on the property. No occupancy permit would be issued unless the necessary road improvements providing access to the dwelling was completed.

In recent discussions with Mr. Capellas, there was a concern raised as to the enforceability or the County's administration of such a covenant. My understanding is that the

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Planning Department indeed has a mechanism for enforcing similar covenants or conditions of development approval. As you are aware, enforcement of conditions of development approval occurs not only in the subdivision context but also rezoning, variances, development permits, subdivision agreements, etc.

Please note that the agreement to construct such improvements would be extinguished upon the determination that Kaawaloa Road is a County road, the County's acceptance of maintenance responsibilities, or the County's exercise of control, rights or ownership over Kaawaloa Road inconsistent with its present position that the State of Hawaii owns or controls Kaawaloa Road. Our proposal is based upon the Department of Public Works' comments of September 28, 1990, that road improvements to Hienaloli-Kahului Road were unnecessary as the lots in Subdivision No. 90-48 accessed a county road which can be improved by the County if need be (see attached).

6. Comments 6 and 8. The internal road access easement will reflect such radiuses.

7. Comment 7. This is acceptable, provided that our proposal on comment 5 is accepted.

8. Comment 9. With the understanding that only one street light at the entrance to the property from Napoopoo Road would be required, this comment is acceptable.

9. Comments 10 and 11. These are acceptable, but in principle are more appropriately reviewed in the road construction stage and can be incorporated in the language of the covenant. Comment 10 is also in part a function of the upstream flood control issue.

10. Comment 12. Again, our position on this issue has been made clear. DLNR has indicated it does not have jurisdiction over the road and hence obtaining permission from it will not be possible. However, should the Smiths select Kaawaloa Road for access purposes, they will agree to make good faith attempts to seek permission from the appropriate State and County agencies. If no agency acknowledges its authority to grant a right of entry within a reasonable period of time, then the Smiths will proceed forward with the improvement.

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Unless we hear otherwise from any of you, we will attempt to schedule a meeting with all of you for mid-October. We ask that you be prepared to discuss our proposal in depth so that we can bring this matter to a speedy conclusion.

Very truly yours,

MENEZES TSUKAZAKI YEH & MOORE

By 

THOMAS L. H. YEH

cc: Dexter Smith, et al.
Millicent Smith
Blake Bushnell, Esq.
TLHY:db