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RECEIVED
JUN 22 1990
PLANNING DEPT
COUNTY OF HAWAII
June 21, 1990

Duane Kanuha, Planning Director
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

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

Dear Mr. Kanuha:

We represent the Smith family in the above-referenced matter.

Enclosed herewith please find a response to the comments in a Department of Public Works' memorandum, dated February 26, 1990.

We request that you not defer action on the application. We believe that the submission of a contour map should properly be a condition of tentative subdivision approval. Similarly, we believe that Kaawaloa Road is a County highway and public road and that DLNR permission is not necessary. In any event, the Smiths will develop an internal access regardless of the outcome of the Kaawaloa Road issue.

We therefore ask for your cooperation in continuing to process the application with the understanding that we are requesting the Department of Public Works to amend their comments and hence the conditions of tentative subdivision approval.

Should you have any questions about the above, please let us know.

Very truly yours,

MENEZES, TSUKAZAKI & YEH

By



THOMAS L. H. YEH

Encl.

cc: Mr. Dexter Smith

TLHY:db

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June 21, 1990

Robert K. Yanabu, Division Chief
Engineering Division
Dept. of Public Works
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

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

Dear Mr. Yanabu:

We represent the Smith family in relation to their application for consolidation/subdivision of the property referenced above. We are requesting the department's reconsideration of the comments contained in a letter dated February 26, 1990.

As a background, the Smiths (four families and their ancestors) have owned the property in excess of 125 years. Our clients, who own the property as tenants in common, obtained recognition that the property is comprised of eight (8) pre-existing lots in November of 1989. Their intention is to reconfigure the lots in a more equitable fashion such each family will retain ownership of a large and small parcel. Given the history of the Smiths' ownership, it is apparent they are not speculators. We have enclosed a copy of the configuration of pre-existing lots for your information.

Presently, Alexander Smith and his wife reside on and farm the area shown as Parcel 1 on the consolidation/subdivision map. James Smith and his wife are building a home (under a Ohana Housing permit) on Parcel 2 and will reside there as soon as it is completed. The other members of the family presently live in Honolulu and do not intend to farm or build upon their parcels until several years from now. All Smith family members, however, intend to use as much of their property as possible for farming and ranching purposes.

As you know, the Subdivision Code, at Section 23-7, exempts consolidation/subdivision actions from the requirements and standards of the Code where the same number or fewer lots are created, provided that the Planning Department may require necessary improvements to further the public welfare and safety.

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Engineering Division
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We understand that what improvements may be "necessary" is determined on a case by case basis and are not required to conform to the standards of the Code. We believe that the issue of what is "necessary" should be reviewed in the context of whether the change in configuration or boundaries would create a hazard to the public welfare which did not formerly exist and for which improvements are then needed to avoid such a hazard.

In light of the above, we address each of your comments for which reconsideration is requested as follows:

1. Regarding Comment No. 4. We do not believe that the proposed action will create additional impacts to either Napoopoo Road or Kaawaloa Road than previously have been allowed to exist. Moreover, we understand that neighboring property abutting Kaawaloa Road was consolidated and resubdivided in 1988 without requiring the granting of any setback. Nevertheless, the Smiths are willing to provide for additional right-of-way benefitting the lots owned by the Smith family.

The Smiths do not presently regard the request for a road widening setback as a "necessary" improvement caused by the reconfiguring of boundary lines in the subject application. If the Department believes that circumstances justify this requirement, we would appreciate the opportunity to discuss this with you.

2. Regarding Comment No. 6(a), it is also impossible for the Smiths to widen the road as requested as they have no control over the ownership of the property abutting Kaawaloa Road near the entrance to Napoopoo Road.

Aside from the prohibitive costs of providing a 20' wide agricultural pavement within a 50' right-of-way, it is not believed that the proposed action renders such improvements necessary. In addition, when the Smith family begins to require access to Parcels 7 and 8, it intends to provide internal access to those lots (see next paragraph).

Regarding Comment No. 6(b), the family is willing to provide a 50' wide right-of-way along with the bulldozing and rolling of a 40' wide road. While the family intends to provide a 12' concrete road on-site as the family begins to utilize the

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makai lots, the time frame for such action will extend beyond the expected date of final subdivision approval.

3. Regarding Comment No. 11, the Smiths acknowledge that the first sentence of this comment is acceptable. However, they point out that based upon present runoff patterns, a County culvert from Mamalahoa Highway directs storm water and runoff onto their property. While they will allow the County to dispose of the runoff through a drywell at an acceptable location, they believe the County should bear the cost of disposing of such runoff on-site.

4. Regarding Comment No. 13, it is believed that no permission from DLNR for use of Kaawaloa Road is required. Research indicates that Kaawaloa Road is a County highway and a public road, notwithstanding the history of the County's lack of maintenance. We have enclosed correspondence from the Department of Land and Natural Resources and the Department of Transportation indicating the lack of State jurisdiction. We have also attached copies of historical research which establishes the road's existence well prior to the Highways Act of 1892. As such, since the road is apparently not designated for inclusion in the State Highways System under H.R.S. §264-41, the road is a County highway pursuant to H.R.S. §264-1. Thus, it is believed that the Smiths have a right to take access off Kaawaloa Road if necessary and to provide a reasonably safe internal access in conjunction therewith.

We would appreciate the opportunity to discuss this matter with you and staff at your earliest convenience. Should you have any questions, please let us know. Otherwise, we would appreciate the opportunity to meet with you and will arrange for an appointment soon.

Very truly yours,

MENEZES, TSUKAZAKI & YEH

BY


THOMAS L. H. YEH

Encl.

cc: Planning Director
Mr. Dexter Smith

TLHY:db