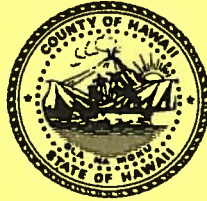


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director



Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

## County of Hawai'i

### PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

February 16, 2021

**CERTIFIED MAIL 7019 2280 0002 0137 0785**  
MARY KATHARINE FOTI TRUST  
1343 MOKULUA DR  
KAILUA, HI 96734-3251

**CERTIFIED MAIL 7019 2280 0002 0137 0617**  
KIOWAI HUI LLC  
ATTN: DAN MCKINLEY  
667B ROSITA AVE  
LOS ALTOS, CA 94024

**CERTIFIED MAIL 7019 2280 0002 0137 0648**  
NISHIHARA, RUSSELL K  
PO BOX 559  
CAPTAIN COOK, HI 96704-0559

**CERTIFIED MAIL 7019 2280 0002 0137 0662**  
ROGERS FAMILY REAL ESTATE  
PARTNERSHIP LP  
1731 AVIATION BLVD  
LINCOLN, CA 95648

**CERTIFIED MAIL 7019 2280 0002 0137 0624**  
JORDAN MEDEIROS  
86-3666 MAMALAHOA HWY  
CAPTAIN COOK, HI 96704-7609

**CERTIFIED MAIL 7019 2280 0002 0137 0631**  
SHREVE, TODD W  
1105 S. CHUCKAWALLA DR  
COTTONWOOD, AZ 86326-4326

**CERTIFIED MAIL 7019 2280 0002 0137 0655**  
SOUZA, STRATTON WILBERT TR  
73-1223 MELOMELO ST  
KAILUA-KONA, HI 96740-9569

Dear Property Owners:

**SUBJECT: Notice of Violation and Order**  
**Re: Special Management Area Violation**  
**File No. ZCV-2020-131W**  
**TMKs: (3) 8-7-005:023; 022; 021; 020; 012; 011; Ala'e, South Kona, Hawai'i**

On May 29, 2019 during a site visit to the above properties, the Planning Department observed the existence of a fence-line in Public Access Easement #6 (PA-6) and a fence-line and grading in Public Access Easement #2 (PA-2). Site visit observations along with Geographical Information Systems (GIS) analysis, and subsequent ramifications are presented below.



Mary Katharine Foti Trust  
Kiowai Hui LLC  
Jordan Medeiros  
Todd W. Shreve  
Russell K. Nishihara  
Stratton Wilbert Souza TR  
Rogers Family Real Estate Partnership LP  
February 16, 2021  
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### **BACKGROUND**

1. Planning Department Permits SUB-06-000435 and SMM-07-00005. As a result of these permits, PA-2 and PA-6 and a Shoreline/Coastal Public Access Agreement were created and recorded with the State of Hawai'i's Bureau of Conveyances presented in bullet three of this background.
  - a) **August 17, 2006:** Application for 12-lot consolidation and re-subdivision submitted to the Planning Department by Foti Alae Properties LLC for 123 acres of land in the Alae 1st and 2<sup>nd</sup> ahupua'a. The subject property (Lots 5 & 6) were created as a result of this subdivision action, which was approved on May 9, 2012 as SUB-06-000435.
  - b) **March 19, 2007:** The Planning Department issued SMA Minor Permit No. 07-000051 (see Attachment A) for a 12-lot consolidation and re-subdivision on 123 acres of land, which included the subject property. Condition No. 3 required development of a Shoreline Public Access Plan to provide a continuous traversable vehicular mauka-makai public access, a 10-foot-wide lateral shoreline pedestrian public access, and public parking along an existing coastal jeep trail or as otherwise mutually agreed upon by the County. Condition No. 3 of this permit was amended in 2008 (see Attachment B) to remove the requirement for vehicular public access and public parking due to the steepness of the pali and numerous archaeological sites in the area.
  - c) **May 31, 2012:** Shoreline/Coastal Public Access Agreement (see Attachment C) is executed between the County, Suzanne Foti and Kiowai Hui, LLC to provide public access from Māmalahoa Highway to the sea over the properties covered by the 12-lot subdivision. This plan established public access easements PA-1 through PA-10. However, only PA-1, PA-3, PA-4, PA-5, and PA-10 exist on the ground because they are located over existing jeep roads and a coastal historic trail. This plan does not require the landowners to construct or improve any of these easements. Therefore, at this time there is not a continuous public access from the highway to the shoreline.
  - d) **December 23, 2015:** The Planning Department issued a pre-existing lot of record determination (PELOR) recognizing the historic trail (proposed Lot R-1) as an Old Government Road owned by the State of Hawai'i.
  - e) The subject lots were created as a result of this subdivision action, which was approved on May 9, 2012 as SUB-06-000435.
  - f) **January 11, 2016:** Mary K. Foti Trust submitted to the Planning Department an application (Application No. SUB-16-001575) for a 4-lot consolidation and re-subdivision. This application was withdrawn.
  - g) **August 7, 2019:** Kiowai Hui LLC submitted to the Planning Department an application (Application No. SUB 19-001918) for a 2-lot subdivision.



Mary Katharine Foti Trust  
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2. Condition #3 and #7 of SMM 07-000051 as amended by the Planning Director January 10, 2008 states:

"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 Hawai'i 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 halfway 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.

4. 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."
5. Shoreline/ Coastal Public Access Agreement, State of Hawai'i Bureau of Conveyances Document #A-45550731 states:

**"Agreement-1(b) and 1(d)**

- b) Easement" PA-2" being a 52-foot-wide public pedestrian access along the Historic Trail traversing the Property from the north property line to the south property line approximately midway between Mamalahoa Highway and the shoreline;
- d) PA-6" being a 10-foot-wide public pedestrian access within Access Easement A-3" extending from Mamalahoa Highway to the intersection of" PA-3" and PA-4;"

**Agreement-4(b) and 4(c)**

- b) Owners shall neither construct nor place any physical impediments that would inhibit safe pedestrian passage.
- c) Any improvements made by the Owners within or affecting any of the public pedestrian easements shall require the prior written approval of the Planning Director and shall be the responsibility of the Owners to maintain."

Mary Katharine Foti Trust  
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6. Planning Department Rule 9. Provision for Enforcement of Zoning Code and Special Management Area states:
- a) "9-1. Authority and purpose: Pursuant to authority conferred by Subsection 46-1.5, Hawai'i Revised Statutes, the purpose of this rule is to establish a procedure and provisions for the enforcement of Chapter 25 (Zoning Code), Hawai'i County Code, and Special Management
  - b) Area (SMA), as defined in Chapter 250A. Hawai'i Revised Statutes and Planning Commission Rule 9.
  - c) 9-6. SMA Penalties.
    - i. Any person who violates any provision of Planning Commission Rule 9 shall be liable for a civil fine not to exceed \$ 100,000.
    - ii. In addition to any other penalties, any person who violates any provision of Planning Commission Rule 9 shall be liable for a civil fine not to exceed \$ 10,000 a day for each day the violation persists.
    - iii. Any civil fine provided under this rule may be imposed by the circuit court or the Director after an opportunity for a hearing under Chapter 19, HRS."

### FINDINGS

A site visit was conducted on May 29, 2019 at approximately 0930 hr. with the following persons in attendance:

- 1. Jackson Bauer - Na Ala Hele (NAH)
- 2. Rick Gmirkin - Ala Kahakai National Historic Trail (ALKA)
- 3. Sean Naleimaile - State Historic Preservation Department (SHPD)
- 4. Kevin McCabe – (Ala'e Farms representative)
- 5. Maija Jackson - Planning Department
- 6. Kamuela Plunkett - Planning Department

The above referenced persons proceeded with the site investigation which revealed the following:

- 1. A fence-line runs mauka to makai between TMK parcel 8-7-005-012 (Lot 7) on the south, and parcels 8-7-005-011 (Lot 11); 8-7-005-020 (Lot 2); 8-7-005-021 (Lot 3); 8-7-005-022 (Lot 4); and 8-7-005-023 (Lot 5) to the north.
- 2. There were lockable gates between Lots 11, 2, 3, 4, and 5.
- 3. There is a fence-line with grading running north from a gate on the jeep road separating Lots 4 and 5.
- 4. From the gate separating Lots 4 and 5, on the south side of the mauka - makai fence-line, grading was observed in Lot 7 looking due south approximately perpendicular to the mauka – Makai fence-line.



Mary Katharine Foti Trust  
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### **SUBDIVISION MAP 06-000435 AND GIS FINDINGS**

1. According to an overlay of SUB-06-000435 map onto County TMKs and the current landscape, it appears that the mauka – makai fence-line is built within PA-6 (see Attachment D).
2. According to an overlay of SUB-06-000435 map onto County TMKs and the current landscape, along with site visit GPS mapping, it appears that the fence-line extending north from the gate separating Lot 4 and 5 and its related grading encroaches into PA-2, and at certain points breach the historic trail property (Old Government Road) Site 24136 identified by ALKA (see Attachment D).
3. According to an overlay of SUB-06-000435 map onto County TMKs and the current landscape, along with site visit GPS mapping, it appears that the grading extending south from the mauka - makai fence-line into Lot 7 at the point of where the gate separating Lot 4 and 5 is located, encroaches into PA-2 and at certain points breach the historic trail property (Old Government Road) Site 24136 identified by ALKA (see Attachment D).

### **VIOLATION**

Based on the Site inspection conducted on May 29, 2019, and GIS/ easement analysis provided by Planning Staff, the Planning Director affirms that you are in violation of the following:

SMM 07-000051 as Amended January 10, 2008:

1. Condition #3(a)(b)(c)
2. Condition #7
3. Shoreline/ Coastal Public Access Agreement, State of Hawai'i Bureau of Conveyances Document #A-45550731
  - (a) Fence-line built within PA-6
  - (b) Fence-line built within PA-2 between Lots 4 and 5
  - (c) Grading, and grading breach of Site 24136 within PA-2 in Lot 7

Planning Department Rule 9-6 SMA Penalties states:

1. a) Any person who violates any provision of Planning Commission Rule 9 shall be liable for an initial civil fine not to exceed \$100,000.
2. b) In addition to any other penalties, any person who violates any provision of Planning Commission Rule 9 shall be liable for a civil fine not to exceed \$10,000.00 a day for each day the violation persists.
3. c) Any civil fine provided under this rule may be imposed by the circuit court or the Director after an opportunity for a hearing under Chapter 19, HRS.

Planning Commission Rule Section 9-8a (Permit required for development) states:

1. "No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule."

Mary Katharine Foti Trust  
Kiowai Hui LLC  
Jordan Medeiros  
Todd W. Shreve  
Russell K. Nishihara  
Stratton Wilbert Souza TR  
Rogers Family Real Estate Partnership LP  
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Planning Commission Rule Section 9-17 (Penalties) states:

1. (a) "Any person who violates any provision of this rule shall be liable for (1) a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation.
2. (b) In addition to other penalties, any person who is violating any provision of this rule shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.
3. (c) Any civil fine or other penalty provided under this rule may be imposed by the circuit court or by the Department after an opportunity for a hearing under Chapter 91, HRS.

### **ORDER**

You are hereby ordered to complete the following corrective action(s) at your own expense by the "Deadline Date" of April 16, 2021, unless otherwise noted:

1. All Lot owners are required to remove and properly dispose of the mauka – makai fence-line located within PA-6 or provide a coordinated alternative planned easement from Hawai'i Belt Road (Mamalahoa Hwy) to PA-4 (Ranch Road). An alternative public easement alignment will require approval from the Planning Director and an amendment to SMM-07-000051 and metes and bounds survey of alternative easement amending SUB-06-000435, and recordation with the State of Hawai'i Bureau of Conveyances.
2. Lot owners shall coordinate a meeting with all involved Lot Owners and the appropriate County Planning Staff. The purpose of this meeting shall be to discuss corrective actions and possible alternative corrective actions to fines.
3. Once an understanding of fines and corrective actions has been reached, you must also submit as part of the SMM a scope of work for the remediation of violations. This scope of work must be approved by the Planning Director prior to its implementation and shall include,
  - a) The date of implementation and anticipated completion.
  - b) List of equipment(s) necessary to complete all of the corrective actions as stated in the Order; and
  - c) A description of how corrective actions will be executed
4. Submit a Public Access Plan indicating where the Official Public Access easement is should it be re-routed.
5. Corrective Actions will be determined to have been completed once you complete the following:
  - a) Pay all monetary penalties, and/or
  - b) Complete all agreed upon corrective actions.
6. All property owners are being assessed a civil fine of \$10,000.00 each for the violations listed above.



Mary Katharine Foti Trust  
Kiowai Hui LLC  
Jordan Medeiros  
Todd W. Shreve  
Russell K. Nishihara  
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Rogers Family Real Estate Partnership LP  
February 16, 2021  
Page 7

7. If all of the above stated Order and Corrective Actions are not met by the "Deadline Date", a daily civil fine starting at \$200.00 per day, per lot owner, will be assessed beginning April 19, 2021, until all of the above corrective action has been completed. Daily fines will increase according to the Department's daily fine schedule until the violation is corrected.
  - a) Resolution of Notice of Violation requires completion of all Corrective Actions and payment in full of all civil fines.
  - b) Pay all fines due to this office to:  
County of Hawai'i  
Planning Department  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740
  - c) Cashier's checks or money orders shall be made payable to Director of Finance. Personal checks are not accepted.

This Order shall become final thirty (30) days after receipt of the Order. On or before the final date, any person(s) subject to this Order may appeal the Order

### **GENERAL INFORMATION**

#### **Can you get an extension to have more time to correct the violation?**

**Yes.** If you do not complete all of the corrective action by the "**Deadline Date**", you may want to submit before the "Deadline Date" a "request for a time extension." The request must include the following:

1. Describe in detail what corrective actions you **have completed** prior to requesting this time extension.
2. Submit a detailed schedule of each activity and the amount of additional time necessary to complete each activity and the date in which you expect the violation to be fully corrected.
3. A time extension **will not** be granted if you do not provide in detail what corrective actions have been completed prior to the deadline date.
4. The mere submission of a time extension request will not guarantee the approval for the request nor does it extend your right to appeal.

#### **Can you appeal this Notice of Violation?**

**Yes.** In accordance with Section 6-9.2 (a) of the Hawai'i County Charter, the Board of Appeals is authorized to hear and determine any appeal from the final decisions of the planning director.

1. An appeal shall be in writing, in the form prescribed by the Board of Appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the Board of Appeals with the proof of service.
2. The appellant, landowner(s) if not the appellant, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the Board of Appeals.

Mary Katharine Foti Trust  
Kiowai Hui LLC  
Jordan Medeiros  
Todd W. Shreve  
Russell K. Nishihara  
Stratton Wilbert Souza TR  
Rogers Family Real Estate Partnership LP  
February 16, 2021  
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For your convenience, we have enclosed the "County of Hawaii Board of Appeals General Petition for Appeal of Decisions by Planning Director" form.

Address the Appeal to: Board of Appeals  
101 Pauahi Street, Room 3  
Hilo, HI 96720

**Due Date for Appeal:**

**The appeal must be received within thirty (30) calendar days from the date of receipt of this Notice of Violation and Order.** An appeal to the Board of Appeals shall not stay the provisions of the Director's "Order" pending the final decision of the Board of Appeals. The appeal must be made in accordance with the Board of Appeals Rules of Practice and Procedures or it may result in the dismissal of the appeal.

**What happens if I lose my appeal?**

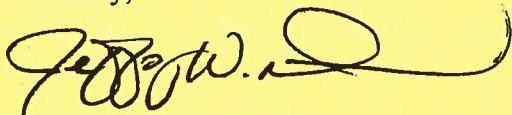
The assessment and accumulation of fines does not stop when you file for an appeal. If the Board of Appeals denies your appeal, then you will be required to pay your fines from the day the fines began to the

date the violation(s) has been corrected which must be verified by the Planning Department. You can also take corrective action as described in this letter and stop the daily fines, while appealing. If you do not take corrective action, daily fines will continue to accrue incrementally.

Should you acquire the services of an attorney/counsel representation then you are required to also submit a letter of consent with your response letter authorizing the County to correspond and respond to the attorney/counsel representation.

Should you have questions regarding completion of the Corrective Actions please contact Mr. Kamuela Plunkett at 323-4793 or Planning Inspector Mr. Horace Yanagi at 323-4770.

Sincerely,



JEFFREY W. DARROW  
Deputy Planning Director

KP/HTY/MJJ:akm

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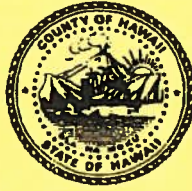
Mary Katharine Foti Trust  
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Rogers Family Real Estate Partnership LP  
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Enclosures: Attachment A- SMA Minor Permit No. 07-000051 within letter dated March 19, 2007  
Attachment B- Amendment to Condition 3 of SMM 07-000051 within letter dated  
January 10, 2008  
Attachment C- Shoreline/Coastal Public Access Agreement recorded June 21, 2012  
Attachment D- Situational Analysis for the Foti/McKinley Subdivision  
County of Hawai'i Board of Appeals General Petition for Appeal of Decisions by Planning  
Director form.

Electronically copied with enclosures. No hard copy to follow.

Mr. John Mukai, Esquire, Deputy Corporation Counsel  
Ms. Maija Jackson Planning Division  
Mr. Kamuela Plunkett, Long Range Division  
Mr. Horace Yanagi, Planning Inspector  
Jackson Bauer - Na Ala Hele (NAH), DLNR  
Rick Gmirkin - Ala Kahakai National Historic Trail (ALKA), NPS  
Sean Naleimaile - State Historic Preservation Department (SHPD), DLNR

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 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

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."*



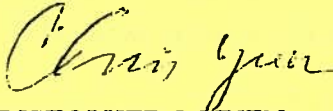
Mr. Gregory R. Mooers  
Mooers Enterprises, LLC  
Page 2  
March 19, 2007

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

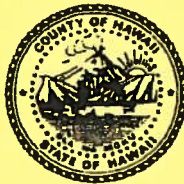
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Encl: SMM No. 07-000051

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)

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 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

**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 tsunami, 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**  
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Date