STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

March 24, 2006

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING:	Amendment to Condition 7 & 9 of Conservation District Enforcement File No. HA 05-19
LANDOWNERS:	A. David and Mary Carroll
TMK's:	(3) 9-5-016:036
AREA OF USE:	17,692 square feet
AREA OF PARCEL:	47.5 acres
LOCATION:	Hokukano, Ka'u, Island of Hawaii
SUBZONE:	General

BACKGROUND:

On January 13, 2006, the Board of Land and Natural Resources (Board) found the Carrolls in violation of Chapter 13-5, Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes, of the Conservation District Rules relating to construction of a Single Family Residence not in accordance of approved construction plans. In addition, the Board approved mitigative measures to minimize or eliminate the interference, nuisance, harm or hazard to the natural resources at the subject location.

As a result of the Board's action, the Carrolls were fined a total of $5200.00 and were required to submit construction plans to connect the two separate structures, submit a landscaping plan to mitigate view impacts, and submit a report to determine the potential impacts of lights on the endangered Hawksbill turtle in consultation with the Division of Aquatic Resources and National Park Services-Hawaii Volcano National Parks. Should it be determined that there is a impact, then the landowner shall submit a residential light screening and mitigation plan within 90 days of that determination. Furthermore, the Board determined that Staff work with the Permittee to determine if an After the Fact subdivision is required **(Exhibit 1)**.

DISCUSSION

The Office of Conservation and Coastal Lands (OCCL) received payment of the $5200.00 fine, landscaping and construction plans which were approved by the Department by letter dated February 24, 2006 **(Exhibit 2)**. On March 6 and 14, 2006, the OCCL received a correspondence from Mary Carroll regarding a request for an extension of 90 days to submit findings of the required turtle report in consultation with Hawaii Volcanoes National Park Service **(Exhibit 3 & 4)**.

In regards to condition 7, according to the information presented, Ms. Carroll believes that the OCCL and the National Park Service (NPS) needs to "work out" how technical services by the NPS will proceed and that this is an issue that needs to be "resolved" between National Park Service and the OCCL. Furthermore, NPS has stated that "National Park Service does not serve as consultants for private property owners in disputes with your agency and it was inappropriate to identify our participation as a mitigative measure," **(Exhibit 5).**

Staff notes that in a phone conversation that took place with Ms. Carroll on March 2, 2006, Staff pointed out to Ms. Carroll that the Board of Land and Natural Resources imposed this condition based upon her Counsel's suggestion. In addition, Ms. Carroll was informed that the burden of generating this report lies with the Permittee as indicated in the February 24, 2006 correspondence from the Office of Conservation and Coastal Lands.

Staff would like to reiterate that it is the responsibility of the Carrolls to generate this report. Consultation with credible sources must be included with this report. Should the Carrolls wish to consult with the Hawaii Volcano National Park Resource Management in regards to technical services that may be provided, then this is something the Carrolls needs to work out with the NPS. The OCCL as a regulatory agency should not be involved with brokering consultants for the Carrolls. Furthermore, it needs to be clarified that this is a Board of Land and Natural Resources imposed condition not OCCL Staff's position. Therefore this is not an issue between OCCL and National Park Service.

Staff notes the Carrolls need to comply with Board imposed conditions. The request is for a 90-day time extension to complete Board imposed condition 7 that states:

> To determine the potential impacts of lights from the Single Family Residence on Hawksbill Turtle nesting behavior in the area, the landowner shall, in consultation with the State Department of Land and Natural Resources-Division of Aquatic Resources and the National Park Services-Hawaii Volcanoes National Park-Resources Management prepare and submit a report to the Office of Conservation and Coastal Lands within 90 days of the Board's action;

In regards to condition 9 concerning if an After the Fact subdivision is required, Ms. Carroll's Counsel, Steven Lim in response to OCCL's February 24, 2006 correspondence has stated "the BLNR has resolved this matter, and this requirement was not made a

condition under Enforcement File HA 05-19. Should DAGS desire to complete this matter as instructed by the BLNR, the Carrolls are willing to provide DAGS with a fee owners' authorization" **(Exhibit 6)**.

Staff notes condition 9 states: "That Staff work with the Permittee to determine if an After the Fact subdivision is required." DAGS completed land exchange subdivision maps in 1975. The County has stated that the tax map still shows the exchanged land areas as separate parcels or lots as parts of the respective TMK parcels they were to be consolidated with **(Exhibit 7)**. Upon review of the land exchange documents, Staff believes that an After the Fact subdivision is not required, however to clarify County tax map records, the Carrolls must obtain the required approval from the County of Hawaii to effect the subdivision/consolidation of the land exchange.

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE the amendment for an extension of 90 additional days to complete and submit a report to determine the potential impacts of lights from the Single Family Residence on Hawksbill turtle nesting behavior in the subject area and that the Carrolls obtain the required approval from the County of Hawaii to effect the subdivision/consolidation of the access road land exchange approved by the Board on January 10, 1975, subject to the following conditions:

1. That condition 7 of Enforcement File HA 05-19 is amended to provide that the Carrolls have until July 12, 2006 to submit the potential impact of lights from the Single Family Residence on Hawksbill turtle nesting behavior in the subject area;

2. That condition 9 of Enforcement File HA 05-19 is amended to provide that the Carrolls obtain the required approval from the County of Hawaii to effect the subdivision/consolidation of the land exchange of the access road within 90 days of Board action;

3. That all other conditions imposed by the Board under Enforcement File HA 05-19, as amended, shall remain in effect.

Respectfully submitted,

K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

RECEIVED JAN 19 2005

LINDA LINGLE
GOVERNOR OF HAWAII

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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COASTAL LANDS

2006 JAN 31 P 1:36

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

ENF: HA 05-19

CERTIFIED MAIL

JAN 18 2006

A. David & Mary Carroll
c/o Steven S.C. Lim
Carlsmith Ball LLP
121 Waianuenue Avenue
Hilo, Hawaii 96720

Dear Mr. and Ms. Carroll,

SUBJECT: Construction of a Single Family Residence Not in Accordance of Approved Construction Plans and Proposed Mitigative Measures to Reduce Impact to the Natural Resources Within the Conservation District Located at Hokukano/Ka'alaiki, Ka'u, Island of Hawaii, TMK (3) 9-5-016:036

This is to inform you that on January 13, 2006, the Board of Land and Natural Resources (Board) has found you in violation of Chapter 13-5, Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes, of the Conservation District Rules relating to construction of a Single Family Residence not in accordance of approved construction plans. In addition, the Board approved mitigative measures to minimize or eliminate the interference, nuisance, harm or hazard to the natural resources located at Hokukano/Ka'alaiki, Ka'u, Island of Hawaii, TMK (3) 9-5-016:036, subject to the following:

1. The landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in two instances by failing to properly connect the two wings of the Single Family Residence and failing to obtain approval prior to construction of an entryway, courtyard and stonewalls. The alleged is fined a total of $4,000.00 for two Conservation District violations.

2. The landowner is fined an additional $1,200.00 for administrative costs associated with the subject violations;

3. The landowner shall pay all fines (total $5,200.00) within ninety (90) days of the date of the Board's action;

4. The landowner shall submit construction plans to the Office of Conservation of Coastal Lands, in accordance with Chapter 13-5 HAR, Exhibit 4, to properly attach the two separate structures within 120 days of the Board's action;

EXHIBIT 1

5. Upon approval, the landowner shall complete construction in accordance with the approved plans within one year of the plans approval;

Regarding mitigative action to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

6. To mitigate views of the Single Family Residence, the landowner shall submit to the Office of Conservation and Coastal Lands a revised landscaping plan which mitigates view impacts, including a listing of all proposed plantings within 90 days of the Board's action;

7. To determine the potential impacts of lights from the Single Family Residence on Hawksbill Turtle nesting behavior in the area, the landowner shall, in consultation with the State Department of Land and Natural Resources-Division of Aquatic Resources and the National Park Services-Hawaii Volcanoes National Park-Resources Management prepare and submit a report to the Office of Conservation and Coastal Lands within 90 days of the Board's action;

8. If it is determined by the Department of Land and Natural Resources-Division of Aquatic Resources and the National Park Services-Hawaii Volcanoes National Park-Resources Management that the lighting from the Single family Residence has a significant impact on the Hawksbill Turtle nesting behavior in the area, the landowner shall submit to the Office of Conservation and Coastal Lands, a residential light screening and mitigation plan within 90 days of that determination;

9. That Staff work with the Permittee to determine if an After the Fact subdivision is required;

10. That in the event of failure of the alleged to comply with any order herein, the landowner shall be fined an additional $2,000.00 per day until the order is complied with; and

11. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within (30) days. Should you have any questions, please contact Tiger Mills of our Office of Conservation and Coastal Lands at 587-0382.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

M/M Carroll
c/o Steven Lim

Enf: HA 05-19

Receipt acknowledged:

Mary C. Carroll

Signature

1/24/06

Date

cc: Chairperson
DLNR-Hawaii District Land Office
DLNR-DOCARE (Hawaii)
County of Hawaii, Department of Planning
DLNR-Division of Aquatic Resources
Hawaii Volcanoes National Park-Resources Management

LINDA LINGLE
GOVERNOR OF HAWAII

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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AQUATIC RESOURCES
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BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

ENF: HA 05-19

FEB 24 2006

Steven S. C. Lim
Carlsmith Ball LLP
121 Waianuenue Avenue
P.O. Box 686
Hilo, Hawaii 96721-0686

Dear Mr. Lim,

SUBJECT: Enforcement File HA 05-19 Condition Compliance for a Single Family Residence (SFR) Located at Hokukano/Ka'alaike, Ka'u, island of Hawaii, TMK: (3) 9-5-016:036

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your client's Conservation District violation fine payment of $5200.00 and construction plans to attach the two separate structures with a connecting wall and the courtyard area. According to the information presented, the connecting wall forms a right angle and is ≈ 9'8" tall and each perpendicular wall is ≈ 4' wide. An adjacent doorway is also proposed. We have approved plans for the connection and courtyard and have returned a copy for your client's records. If your client has received all other approvals that are required, they may initiate construction of the connective wall. Construction of this connection must be completed within one year of the date of this correspondence.

Regarding mitigative measures to minimize the impact the SFR may have on the natural resources of the area; we have approved your landscaping plan to mitigate view impacts. Native flora is preferred. Nonnative species that contain small seeds or berries that may be dispersed by the winds and birds should be avoided. Plantings should be maintained and should not encroach onto neighboring properties.

Regarding the additional plants to be approved, verbenas, guavas, trumpet vines, Formosa koa and Chinese Banyan have all been "documented to cause significant ecological or economic harm in Hawaii as determined from published information on the species' current impacts in Hawaii." [1] Regarding passion fruit, banana passion fruit and wing leaf passion fruit have been listed as a noxious weed for eradication by the Department of Agriculture. All plants mentioned here should not be planted in the Conservation District.

Regarding the potential light impact from the SFR land use upon the Hawksbill turtle, a report needs to be submitted to the Department. The responsibility of generating this report lies with your

[1] www.botany.hawaii.edu/faculty/daehler/WRA/full_table.asp.

EXHIBIT 2

client. Consultation with credible sources must be included with this report. Should you wish to consult with the Hawaii Volcano National Park Resource Management in regards to technical services that may be provided, a formal request should be sent to Superintendent Cindy Orlando of Hawaii Volcano National Park at P.O. Box 52, Hawaii National Park, Hi 96718.

Regarding the After the Fact subdivision for the land the access road is located upon; it is unclear who owns this land. State of Hawaii Land Patent No. S-15, 289 granted this road right of way of 62,047 square feet to Arthur H. Ulrich, husband of Euela L. Ulrich, his heirs and assigns forever in exchange for 62,049 square feet of the property's former access road (Exhibit 1). This land to the State was included as an exception within the warranty deed that granted TMK: (3) 9-5-016:036 from Ms. Ulrich to the Carrolls. However, the warranty deed does not include the existing access road and it is unclear who owns this parcel of land.

Should evidence of clear title be obtained for the land of the existing access way and the Carrolls wish to consolidate it with TMK: (3) 9-5-016:036, at that time, a Conservation District Use Application should be filed for consolidation.

With the exception of conditions # 7 & # 8 of Enforcement File HA 05-19 (Exhibit 2), the OCCL believes all other conditions have been met. We have included a receipt of your client's fine payment for their records. Should you have any questions regarding this matter, please contact Tiger Mills of our Office of Conservation and Coastal Lands at 587-0382.

Sincerely,

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

cc: Chairperson
DLNR-Hawaii District Land Office
DLNR-DOCARE (Hawaii)
County of Hawaii, Department of Planning
DLNR-Division of Aquatic Resources
Hawaii Volcanoes National Park-Resources Management

Mary C. Carroll
P.O. Box 654
Naalehu, Hawaii 96772

610-527-0184
Cell: 808-936-8707

E-mail: carrollmcc@aol.com

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 MAR -6 A 7:50
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 4, 2006

Ms Tiger Mills
OCCL
Honolulu, HI 96808
Sent by fax:: 808-587-0322

Dear Tiger,

On March 3 Cindy Orlando e-mailed me an informal response to the letter that you asked me to write to Hawaii Volcanoes National Park. It concerned the BLNR decision that a turtle study be conducted by NPS and DAR. I believe you will be receiving a letter outlining the Park's position on this..

Although they are willing to give the technical assistance needed, they believe the process must properly be worked out directly with DLNR. NPS believes that my involvement at this stage is inappropriate.

After this issue is resolved between you and HVNP, we will need 90 days to submit the findings. This means I will need an extension of the original 90 days.

Of course I will assist in any way deemed appropriate by all.

Sincerely,

Mary

Mary C. Carroll

CC: Cindy Orlando, Superintendent, Hawaii Volcanoes National Park
Larry Katahira, Hawaii Volcanoes National Park

EXHIBIT 3

Mary C. Carroll
P.O. Box 654
Naalehu, Hawaii 96772

610-527-0184
Cell: 808-936-8707

E-mail: carrollmcc@aol.com

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 MAR 14 A 9: 17
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 9, 2006

Ms Tiger Mills
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
PO Box 621
Honolulu, HI 96808

Dear Tiger,

I faxed an earlier version of this letter to you last week end. This letter clarifies the request for an extension of the report on turtles that is due April 13.

On March 3 Cindy Orlando e-mailed me an informal response to the letter that you asked me to write to Hawaii Volcanoes National Park. It concerned the BLNR decision that a turtle study be conducted by NPS and DAR. I believe you will be receiving a letter outlining the Park's position on this.

Although they are willing to give the technical assistance needed, they believe the process must properly be worked out directly with DLNR. NPS believes that my involvement at this stage is inappropriate.

After this issue is resolved between you and HVNP, we will need 90 days to submit the findings. This means that if OCCL and NPS reach an agreement on how to conduct the turtle report by the end of next week, March 17, we will need 90 days after that to produce the report. This would make the extension up to June 19.

Of course I will assist in any way deemed appropriate by all, and I expect guidance from OCCL as to the next step.

Sincerely,

Mary

Mary C. Carroll

CC: Cindy Orlando, Superintendent, Hawaii Volcanoes National Park
Larry Katahira, Hawaii Volcanoes National Park

EXHIBIT 4

United States Department of the Interior

Hawaii Volcanoes National Park
P. O. Box 52
Hawai'i National Park, HI 96718-0052
808/985-6000
808/967-8186 (FAX)

In Reply Refer to:

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 MAR 13 A 8: 51
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 8, 2006

Samuel J. Lemmo, Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Lemmo,

We are in receipt of copies of various communications between your office and Attorney Steven S.C. Lim, regarding enforcement compliance relative to construction of a single family residence within the conservation district located at Hokukano/Ka'alaike, Ka'u, Island of Hawaii.

This is to advise you that the National Park Service does not serve as consultants for private property owners in disputes with your agency and it was inappropriate to identify our participation as a mitigative measure in this regard.

Additionally, we note that in the minutes of January 13, 2006, a statement was made by Keolalani Hanoa in which she "informed the Board she is an advisor under Cindy Orlando, the Superintendent for Volcanoes National Park and was told that Larry Katahira cannot participate in private matters such as this." These minutes need to be corrected to reflect that Ms. Hanoa does not represent Hawaii Volcanoes National Park or my office as an advisor or in any official capacity in regards to these matters or any others.

To date we have received no official communications from your agency regarding this matter. All future communication on this issue needs to be directly with my office.

Sincerely

Cynthia Orlando
Superintendent

cc: Tiger Mills, OCCL
Steven Lim
Katahira-RM-HAVO

EXHIBIT 5

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE
P.O. BOX 686
HILO, HAWAII 96721-0686
TELEPHONE 808.935.6644 FAX 808.935.7975
WWW.CARLSMITH.COM

DIRECT DIAL NO. SLIM@CARLSMITH.COM

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 MAR 10 A 9:33
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 7, 2006

Samuel J. Lemmo
Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809

Re: Mary and A. David Carroll
File No.: ENF HA-05-19

Dear Mr. Lemmo:

I am in receipt of your February 24, 2006 letter regarding your inquiry into the ownership of the 62,049 sq. ft. area of land. As represented at the BLNR hearing on January 13, 2006, the Carrolls have clear title for their 47.5-acre parcel, as evidenced by the policy of title insurance issued by Title Guaranty of Hawaii, Inc. dated April 26, 1996 (a copy of which has been previously provided to you). In addition, by letter dated July 6, 1977, BLNR Chairman Cobb informed the Department of Accounting and General Services ("DAGS") that the land exchange was approved by the Board on January 10, 1975, and instructed DAGS to "prepare the necessary mapping and obtain the required approval from the County of Hawaii to effect the subdivision of said Parcels 1 and 2 and the consolidation of these two parcels with the respective property." As you may recall, the BLNR at its hearing on January 13, 2006, deleted this requirement off OCCL's list of proposed conditions.

Therefore, the BLNR has resolved this matter, and this requirement was not made a condition under Enforcement File HA 05-19. Should DAGS desire to complete this matter as instructed by the BLNR, the Carrolls are willing to provide DAGS with a fee owners' authorization.

EXHIBIT 6

Please feel free to contact me should you have any questions concerning this matter.

Very truly yours,

STEVEN S.C. LIM

SSL:KYL
xc: Mary and A. David Carroll
4816-8893-4656.1

Harry Kim
Mayor

Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

November 1, 2005

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2005 NOV -8 A 8:47

Mr. Samuel J. Lemmo
Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Lemmo:

Subject: Carroll Single Family Residence CDUP HA-3002
Public Shoreline Access
Tax Map Key: (3) 9-5-016:036 Hokuano, Ka`u, Island of Hawai`i

As you may know, Special Management Area Use Permit No. 79 (SMA 79), which was approved by the County of Hawaii's Planning Commission on November 29, 1978 affecting the subject property, was subsequently nullified by the Planning Commission on December 3, 1981.

SMA 79 allowed for road grading, construction of a water reservoir, fence, ranch quarters building, a windmill, digging a water well, installation of a waterline and electric service poles, leveling of approximately 12 acres of land, and landscaping. Some of the above activities were actually conducted prior to the previous landowner's application for a SMA Use Permit, including much of the road grading, miscellaneous grading activities, and construction of the reservoir.

Condition No. 2 of SMA 79 required *"(t)hat public access to the shoreline shall be provided along the petitioner's access road from the Hawaii Belt Road. The exact terms of the public access, e.g., width, improvements and liability, shall use as a reference Chapter 46-6.5, Hawaii Revised Statutes, relating to public access. They shall be determined by the County through the Planning Director prior to the granting of final subdivision approval for the access road from*

EXHIBIT 7

the Hawaii Belt Road. A copy of said terms shall be forwarded to the Planning Commission for information."

A land exchange agreement between the BLNR and Arthur Ulrich, then owner of the subject property, dated December 8, 1975 was executed creating the currently configured Parcel 36, except for the more recent subdivision (SUB 7208) that created Parcel 41. Mr. Ulrich was instructed by BLNR Chairman Cobb's letter of 7/6/77 to *"prepare the necessary mapping and obtain the required approval from the County of Hawaii to effect the subdivision of said Parcels 1 and 2 and the consolidation of these two parcels with the respective property."* This is the subdivision approval referenced in Cond. No. 2, but no application for the subdivision and re-consolidation was ever submitted to the County. To date the tax map still shows the exchanged land areas as separate parcels or lots (1 & 2) as parts of the respective TMK parcels they were to be consolidated with.

According to our records the land exchange was deemed by the State to satisfy the public purpose requirement of Hawaii Revised Statutes, namely to provide a safer access and egress to Hawaii Belt Road from the subject property. Testimony given before the Planning Commission hearings preceding approval of SMA 79 established that local residents had enjoyed long-standing usage along the alignment of the current access road to reach the shoreline. Therefore, the County of Hawaii desires that an easement providing for public pedestrian access from Hawaii Belt Road to the shoreline be created along the current access road.

The foregoing is being provided in response to your request for information from this office on the status of the public access provisions of SMA 79; and pursuant to our request that your office consider amending the terms and conditions of CDUP HA-3002 to ensure that public access to the shoreline along the applicant's access road be provided.

Should you have questions, please feel welcome to contact Larry Brown or Esther Imamura of my staff at 961-8288.

Sincerely,

CHRISTOPHER J. YUEN
Planning Director

LMB:cd
P:\Wpwin60\Larry\DLNR Correspondence\Lemmo-Carroll 9-5-16-36 SPA.doc