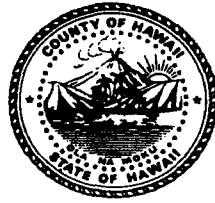


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## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

MAR - 9 2020

Ms. Faith Stone  
77-447 Hoomaluhia Drive  
Kailua-Kona, HI 96740

Dear Ms. Stone:

**SUBJECT; Special Management Area Use Permit No. SMA 19-000074**  
**Applicant: SGRY dba Konalani Yoga Ashram**  
**Permitted Use: Allows to Legitimize the Development and Operation of a Residential Yoga Ashram, Establish and Operate a Church Facility with a Meditation Temple, Classrooms, Six Guest Bedrooms, a Commercial Kitchen and Related Improvements**  
**Tax Map Key: 7-7-004:065 (por.)**

The Leeward Planning Commission, at its duly held public hearing on February 20, 2020, considered the above-referenced request to legitimize the development and operation of a residential yoga ashram, and the establishment and operation of a church facility with a meditation temple, classrooms, six (6) guest bedrooms, a commercial kitchen and related improvements on an approximately one (1) acre portion of a larger 5.1570-acre property situated in the State Land Use Agricultural District. The property is located at 77-0447 Ho'omaluhia Drive, at the southern terminus of Sea View Circle, Hōlualoa 3<sup>rd</sup> – Kaunalumalu-Beach Sec., North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant, its successor or assigns shall comply with all conditions in Special Permit No. 19-000210.

3. As represented by the applicant, any new structures within the SMA Permit Area shall be limited to a height of thirty-five (35) feet.
4. Any new or 'as-built' building permits and development/construction activities within the Kaumalumu Tributary Number. 3 as shown on Subdivision Map No. 7022 shall conform to Chapter 27 - Floodplain Management - of the Hawai'i County Code.
5. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
6. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
7. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
8. The applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.

Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Approval of this permit is based on the reasons given in the attached Findings Report.

Ms. Faith Stone  
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Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,  
Nancy Carr  
Smith

Digitally signed by Nancy  
Carr Smith  
Date: 2020.03.09  
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Nancy Carr Smith, Chair  
Leeward Planning Commission

LSGRYSMA19-074|pc

Enclosure: PC Findings

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
State DLNR-HPD  
GIS Section

**COUNTY OF HAWAI‘I**  
**PLANNING COMMISSION FINDINGS**

**SGRY DBA KONALANI YOGA ASHRAM**  
**SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (SMA 19-000074)**

Based on the following findings, Special Management Area Use Permit No. 19-000074 is hereby approved to legitimize the development and operation of a residential yoga ashram, and allow the establishment and operation of a church facility with a meditation temple, classrooms, six (6) guest bedrooms and a commercial kitchen and related improvements on an approximately one (1)-acre portion of a larger 5.1570-acre property in the Special Management Area. The subject property is located at 77-0447 Ho‘omaluhia Drive, at the southern terminus of Sea View Circle, Hōlualoa 3rd – Kaunakakai – Beach Sec., North Kona, Hawai‘i, TMK: (3) 7-7-004:065 (por).

The applicant is requesting a Special Management Area (SMA) Use Permit to legitimize the development and operation of a residential yoga ashram within an existing, 3,186 square-foot dwelling. According to the applicant, a residential yoga ashram is a religious entity most similar to a monastery for clergy and dedicated meditation practitioners to live and practice together. The dictionary defines an ashram as a hermitage, monastic community, or other place of religious retreat. Konalani Yoga Ashram has functioned as such since purchasing the property in 1999. This structure will be used for clergy and resident practitioners to live and worship.

In addition, the applicant is requesting to develop and operate a new, 4,800 square-foot church facility with a meditation temple, classrooms, six (6) guest bedrooms and a commercial kitchen and related improvements to support the applicant’s mission of sharing its spiritual practices of yoga and meditation. In addition, the applicant proposes to develop a ten (10)-stall, gravel improved parking area. An additional unimproved parking area can also be made available adjacent to the improved parking area. Landscaping will also be provided per Planning Department Rule 17. The applicant anticipates utilizing approximately one (1)-acre of the larger 5.1570-acre property for the proposed uses.

In the near term, the applicant has represented a desire to continue Monday night meditation gatherings specifically for about 14 church members at the proposed Residential Yoga Ashram (existing dwelling). Once the new Ashram Temple structure is built, the applicant proposes to resume the following activities on the subject property: three (3) weekly drop-in meditation classes and three (3) weekly yoga classes open to the public. Classes generally range from three (3) to ten (10) students and range from one (1) to two (2) hours. On occasion, the applicant would also offer special classes and workshops for Hindu/Buddhist Holidays and Sacred Art.

In addition to the preceding, the applicant proposes to hold an estimated four (4) to eight (8) retreats each year (both meditation retreats and Yoga Teacher Training retreats). Based on past practice, the retreats range from one (1) to three (3) weeks and retreat attendance ranges from three (3) to ten (10) students, serving an estimated 18 to 36 retreatants per year. Meals for retreatants will be prepared in the proposed certified kitchen and overnight accommodations will be provided within the proposed six (6) guest bedrooms.

In response to a complaint that the applicant was operating an unpermitted yoga instruction facility with overnight accommodations for students, Planning Inspectors conducted an investigation and determined that there may be a violation of the Zoning Code. In addition, Inspectors identified several unpermitted structures on the property, including a second farm dwelling, cabanas, cabin tent platforms and an outdoor shower facility. In addition, the

Department of Health – Wastewater Division conducted an investigation that determined that the existing dwelling and two (2) unpermitted buildings (additional farm dwelling and bath building) had plumbing features that were illegally connected to a cesspool on the subject property.

Despite the applicant's estimate of \$490,000 to develop the proposed project, the Planning Director determined that the value of the proposed project would exceed the \$500,000 valuation threshold, therefore, an SMA Use Permit application was required. According to the applicant, all public uses of the property have ceased while they are going through the required Special Permit/SMA Use Permit application processes.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, is to preserve, protect, and where possible, restore the natural resources of the coastal zone areas. Therefore, special controls on development within the SMA are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to ensure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means. The grounds for approving an SMA permit are based upon the following criterion listed in bold type:

**The proposed development will not have any substantial 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.** The proposed project did not meet the criteria in State law for requirement an environmental assessment or environmental impact statement. located approximately 0.6 miles (3,170 feet) from the nearest shoreline, thus the proposed use is not expected to have a substantial environmental or ecological effect.

**The proposed development is consistent with the objectives and policies provided by Chapter 205A, HRS and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.** The objectives and policies of Chapter 205A, HRS include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas.

*Coastal Recreational Resources:* The property is located about located approximately 0.6 miles (3,170 feet) from the nearest shoreline and sits at an elevation of about 280 feet. There is no record of traditional public access to the mountains or ocean within the subject property. Given the property's distance from the nearest shoreline, the proposed project should not impact coastal public access or recreational resources.

*Historic Resources:* An Archaeological Inventory Survey entitled, "Inventory Survey of Ho'omalulu on Ali'i Subdivision Increment 1" was prepared in August 1998 by Jack David Henry, B.A. and Thomas R. Walforth, M.S. for PHRI. The AIS study area encompassed approximately 59 acres of land across three (3) separate parcels, including the land area of the subject property (identified in the AIS as Lot 5).

The AIS identified by 26 historic sites, six (6) of which were situated partially or in whole on Lot 5. Those sites included Site 8124: Corral Enclosure; Site 8125: Agricultural Enclosure; Site 8126 Corral Wall; Site 21384: Agricultural Enclosure; Site 21385: Agricultural Terrace; and Site 21394: Agricultural Complex. Additionally, Site 6329: Wall, formed the northern boundary of Lots 4, 5, and 6 and has been capped and mortared with concrete in many areas or has been destroyed completely. The AIS assigned all of the preceding sites with a

Significance Criteria "D": Have yielded, or is likely to yield, information important for research and all of the sites were recommended for "No further work." While not situated on the subject parcel, Site 6343: Judd Trail, which includes a fifteen (15)-foot wide, State managed trail way easement running the entire southern boundary of the subject parcel and was recommended for preservation in place. As part of the mitigation, a ten (10)-foot wide no building easement was required and recorded against the deed of the subject parcel.

The applicant did not provide any documentation from the State Historic Preservation Division (SHPD) accepting or approving the AIS. Furthermore, the Planning Department requested a Chapter 6E review of the subject applications from SHPD as part of this permitting process and has not received any response. However, Planning staff found a February 2, 1999 AIS response from SHPD to PHRI reviewing the AIS and concurring with the discovery of 26 historic sites and significance evaluations of 23 of those sites, including all of the sites situated on the subject property. Furthermore, SHPD agreed with the proposed preservation of the Judd Trail and its corridor and proposed mitigation commitments thereto.

In addition, Planning staff discovered a February 6, 2003 letter from SHPD to the Planning Department addressing historic preservation concerns within the Ho'omalulu on Ali'i Subdivision Increment 1 in response to the cessation of grading and building permit approvals for lots within the subdivision at the time. The letter states in part that SHPD, "*would not object to you lifting restrictions on lots with no preservation or data recovery sites or those solely with Judd Trail or Kuakini Wall preservation commitments.*" The letter included a list of parcels within the subdivision and associated Data Recovery (DR) and Preservation Site Numbers. The subject parcel (on the list as Parcel 65/Lot 2) had no DR sites and only had Judd Trail preservation commitments.

According to the applicant, the subject property was one of eight (8) properties within the subdivision that were granted a perpetual easement for ingress, egress and utility purposes, over and across the Judd Trail by the original developer of the Subdivision, Nahona Partners Inc. However, according to the DLNR-Land Division, no such easements have been executed. Land Division confirmed that Nahona Partners, Inc. did purchase eight (8) Judd Trail easements in 1999, but the Attorney General's Office never finalized grant-of-easement documents due to lack of compliance with the following condition of the easement sale: "*Nohona Partners, Inc., its successors and permitted assigns, at their own expense, shall implement preservation and mitigation recommendations made by the Department of Land and Natural Resources, State Historic Preservation Division. Recommendations shall be incorporated into the easement document and shall be implemented by the Applicant no later than one (1) year after execution of the easement document.*" Shortly after Final Subdivision Approval was granted, Nahona Partners Inc. dissolved and therefore never followed through with those trail preservation requirements. At the date of this writing, SHPD is in the process of determining what those preservation and mitigation recommendations will entail.

During their research on Judd Trail easements, staff also found no evidence of an executed/recorded grant of easement providing the applicant legal access over Ho'omalulu Drive from Ali'i Drive. When staff communicated their findings, the applicant indicated that they had secured legal access as part of the purchase of their property and subsequent BLNR Judd Trail easement sale approvals. Based on the preceding, the applicant has been traversing Ho'omalulu and the Judd Trail for close to twenty (20) years. Since being informed of the lack of proper easements, the applicant has been working closely with DLNR and the Ho'omalulu

Roadway Maintenance Association to determine the process to obtain legal access. Once the applicant obtains legal access across Ho‘omaluhia Drive and the Judd Trail, they can request to amend the permit to allow the second access.

*Scenic and Open Space Resources:* The subject property is not listed in the Natural Beauty element of the General Plan as a scenic site; however, the views of the coast and Hualālai Mountain are indirectly referenced. According to the applicant, the subject site is situated makai of the Hawai‘i Belt Road and has no visibility from that Road. Nor is the property visible from Ali‘i drive. As such, any development of the site should not generate any measure of visual impact. Similarly, Hualālai Mountain is not visible from the property and would not be adversely impacted. That notwithstanding, the applicant is proposing to limit the height of the proposed structures to a maximum of 35 feet, the maximum allowed within the single-family residential zone. This would be less than the 45-foot maximum height limit under the existing Agricultural 5-acre zoning to ensure mitigation of any visual impacts to surrounding residential neighborhoods. A condition of approval will be added to reflect these representations.

*Coastal Ecosystems and Marine Resources:* The property is located about located approximately 0.6 miles (3,170 feet) from the nearest shoreline and sits at an elevation of about 280 feet. In addition, the property is served by County water and all existing and proposed structures are and will be developed with individual wastewater systems meeting the requirements of the State Department of Health. To address the potential impacts of soil erosion and water quality on marine resources and coastal ecosystems the applicant will implement best management practices to comply with Chapter 10, Erosion and Sedimentation Control, Hawai‘i County Code, and State Department of Health (DOH) water pollution control regulations.

*Beach Protection:* There are no beaches on the subject property.

*Coastal Hazards:* The property slopes seaward from the 280-foot elevation. It is not located within a tsunami evacuation zone as designated by the County Civil Defense Agency and is located in Flood Zone “X”, an area determined by FEMA to be outside the 500-year flood plain. However, according to the Department of Public Works – Engineering Division (DPW-Engineering), the Kaumalumu Tributary Number 3 (Tributary) splits the subject property, the extent of which was mapped on Subdivision No. 7022 and recorded against the deed to the property. Based on the applicant’s submitted site plan, it appears that a portion of the existing dwelling and the unpermitted yoga deck is situated within the extent of the Tributary. Furthermore, the proposed location for the new Ashram Temple and parking area appears to be fully within the extent of the Tributary. Based on subsequent conversations with the applicant, they are open to relocating the new Ashram Temple facility out of the tributary.

Per DPW-Engineering, if any of the current structures that are built above/within the Tributary are unpermitted and are seeking ‘as-built’ building permits, those structures shall comply with the requirements of Chapter 27 - Flood Control - of the Hawai‘i County Code and may need to be brought up to current code requirements. A flood study may be required to determine base flood elevations of the Tributary as directed by the Department of Public Works.

Based upon the preceding the proposed development is consistent with the objectives and policies of Chapter 205A, HRS.

**The proposed development is consistent with the County General Plan, Kona Community Development Plan (CDP), Zoning Code and other applicable ordinances.** The County of Hawai‘i’s General Plan is the policy document for the long-range comprehensive development of the island of Hawai‘i. One of the purposes of the General Plan is to guide the

pattern of future development in this County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Urban Expansion, which allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. Churches, religious institutions and other houses of worship are typically found within and adjacent to urban/residential areas and thus would be consistent with this LUPAG designation.

In addition, the proposed use would support the goals and policies of the Land Use element of General Plan.

Land Use Element

- Goal: Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environment of the County.
- Policy: Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

The Kona Community Development Plan (KCDP) directs growth in the Kona Region. The subject parcel is situated within the Kona Urban Area. The KCDP does not speak specifically to Special Permits for religious institutions on agricultural land, but given the subject properties' location within proposed urban growth areas, the those uses are generally consistent with the relevant guiding principles, goals, objectives, policies and actions of the KCDP, including guiding growth in the Kona Urban Area as being primarily within "compact villages."

Based on the preceding, request will not be contrary to the General Plan and Kona Community Development Plan.

**The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist.** In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed. These rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: An Archaeological Inventory Survey entitled, "Inventory Survey of Ho'omalulu on Ali'i Subdivision Increment 1" (included as Appendix A of the application), was prepared in August 1998 by Jack David Henry, B.A. and Thomas R. Walforth, M.S. for PHRI.

No formal floral or fauna study was submitted with the application. According to the applicant, the site has been planted with a mango orchard, citrus trees, breadfruit, tamarind, macadamia nuts, bananas, papayas, sacred Rudraksha seeds, flowers for religious ceremony, herbs, and vegetables. Due to the already developed state of the subject property and its immediate surrounding area. the applicant does not believe that rare or endangered faunal resources are likely to be found within or proximate to the subject site.

The valuable cultural, historical, and natural resources found in the area: The AIS identified by 26 historic sites, six (6) of which were situated partially or in whole on Lot 5. None of the other sites or features will be impacted by the proposed development. Those sites included Site 8124: Corral Enclosure; Site 8125: Agricultural Enclosure; Site 8126 Corral Wall; Site 21384: Agricultural Enclosure; Site 21385: Agricultural Terrace; and Site 21394: Agricultural Complex. Additionally, Site 6329: Wall, formed the northern boundary of Lots 4, 5, and 6 and has been capped and mortared with concrete in many areas or has been destroyed completely.



The AIS assigned all of the preceding sites with a Significance Criteria "D": Have yielded, or is likely to yield, information important for research and all of the sites were recommended for "No further work." SHPD concurred with those evaluations and did not object to further development work on the subject parcel.

While not situated on the subject parcel, Site 6343: Judd Trail, which includes a fifteen (15)-foot wide, State managed trail way easement running the entire southern boundary of the subject parcel. The AIS recommended the trail be preserved in place and that a ten (10)-foot wide no building easement from the edge of the trail alignment be recorded against the deeds of adjacent properties.

Possible adverse effects or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing activities will not be affected by the development.

The applicant constructed and utilizes a gravel driveway across the Judd Trail alignment from Ho'omaluhia Drive. The applicant has applied for an easement from the State to travers this section of the trail, but finalizing that easement is on hold pending development and SHPD approval of preservation treatments for that section of the trail.

Feasible actions to protect native Hawaiian rights: Should any unidentified cultural or historical resource be encountered during construction activities; the applicant will cease work until the DLNR-SHPD has provided clearance to continue work.

As the applicant has not yet secured legal access across the Judd Trail, a condition of approval of the concurrent Special Permit request will limit vehicular access to come from Sea View Circle, the property's only existing legal access. Once the applicant secures legal access across Ho'omaluhia Drive and the Judd Trail, they can request to amend this permit to allow the second access.

With implementation of the conditions of approval, the proposed action will not affect traditional Hawaiian rights.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the preceding findings, the proposed development will not have substantial adverse impacts on the environment, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area