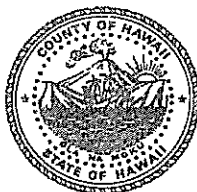


Susan

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

August 29, 2003

Fred B. Hopkins and Corrine Hopkins
75-6081 Alii Drive #LL-101
Kailua-Kona, Hawaii 96740

Dear Mr. & Mrs. Hopkins:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment
Application (SMAA No. 03-01)
Special Management Area Minor Permit No. 141
Applicant: Fred & Corinne Hopkins
Request: Startup Nursery of Palm & Plumeria
& Additional Farm Dwelling
SMA Use Permit No. 398 (December 2, 1999)
Hoomalu on Ali'i Subd., Kaumalualu, N. Kona, Hawaii Isld
TMK: 7-7-04: 91, Lot 24 (5.229 acs.)**

The above SMA assessment application was received for two requests: to establish a startup flower and tree nursery; and secondly, to have an additional farm dwelling. Both requests qualified for SMA approval: the startup nursery qualifies for an exemption from the SMA rules and the additional farm dwelling is approved by the enclosed SMA minor permit *subject to conditions*. The SMA exemption is stated below; performance of the SMA minor permit conditions are stated and discussed in the minor permit document. Special attention is required for the three historic sites located on parcel 91.

Project Description. A startup nursery is proposed for palm and plumeria trees and tuberose plants (approximately 1,725 trees and 2,527 plants, according to the farm plan submitted with the additional farm dwelling agreement application (June 28, 2001). On-site improvements include a first farm dwelling under construction (BP025927 (opened: July 9, 2002)). The proposed additional farm dwelling is for a resident farm manager of the nursery enterprise. Parcel 91 is a mauka flag lot that does not abut the shoreline.

Finding: Declaration of Exemption from SMA Rules. Pursuant to SMA Rule 9-4(10)C, the proposed nursery flower and tree startup is exempt from the SMA definition of "development." The proposed nursery operation is an activity that will use parcel 91 for an agricultural purpose, consistent with the exemption criteria of Rule 9-4(10)B(viii). This rule specifically exempts the cultivating, planting, growing, and harvesting of plants or trees. And therefore, pursuant to Rule 9-10G, this proposal is exempt from the SMA rules.

The exemption is granted for the above proposal consistent with the description provided in the assessment application. While the project is exempt from further SMA review it is still subject to all other applicable state and county regulation; including, the County's building permit review process.

According to the applicant's information, it is also our finding that this project does not exceed the \$125,000 valuation criteria of SMA Rule 9-10A and C.1; and therefore, this proposal does not require a SMA (major) use permit.

Consistent with Zoning & General Plan. SMA Rule 9-7B3 requires a finding that this proposal is consistent with the zoning and County General Plan. The proposed nursery is a land use consistent with the County agricultural (A-5a) zoning. The GP land use designation is urban expansion (low, medium or high density, industrial, and open) and, as noted, it allows for mix densities, according to the GP Support Document at 80. Because the dwelling development on this parcel provides for residential development it is consistent with the GP's low density land use designation; furthermore, as an agricultural land use, the nursery enterprise is a development that imparts a sense of open space consistent with the GP's open space designation. GP Support Document at 97.

Not a Substantial Adverse Effect. According to the criteria of Rule 9-10H, this project does not constitute a substantial adverse effect on the environment because it will not result in the loss of cultural – historic resources located on parcel 91 or the view-plane identified in the GP. Although parcel 91 - lot 24 may be located within a flood zone any substantial adverse effect has been sufficiently minimized to the extent practicable by SMA (major) Use Permit No. 398 (conditions 2 and 4) and the Planning Director's Tentative Approval Letter (September 17, 1999) (conditions 5, 7, and 8). Therefore, this project is not contrary to the coastal zone management (CZM) objectives and policies and the SMA guidelines of Haw. Rev. Stat. Chapter 205A.

View-plane & Line of Sight toward the Sea. The GP Support Document at 36 lists the mauka-makai view-plane from Kuakini Highway (TMK: 7-7) as a site example of natural beauty in the North Kona district. In addition, SMA guideline Rule 9-10H.10 and the

state law, Haw. Rev. Stat. sec. 205A-26(3)(D), requires, where reasonable, to minimize any development which would substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast. Kuakini Highway (Hawaii State Route 19 or 11) is the nearest coastal state highway to this project site.

According to the project area map (00-2079) of the Archaeological Mitigation Plan, parcel 91 is located at an elevation below the Kuakini Highway (approximately the 180 – 200 feet elevation); the highway, however, is at an elevation of over 200 feet mauka of parcel 91 (between elevations 400 – 450 feet, approximately). Because of the considerable mauka elevation, the line of sight toward the sea from Kuakini Highway overlooks parcel 91 and, therefore, the proposed project is determined to not substantially interfere with or detract from the SMA line of sight guideline or the GP's mauka-makai view-plane from the highway.

SMA Minor Permit: Subject to Performance of Conditions. According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(10)(A)(v) relating to Special Management Area, a second single family dwelling is considered "Construction, reconstruction, or alteration of the size of any structure" and defined as "development". Therefore, a Special Management Area Minor Permit is required. For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 141 is hereby issued to allow for the construction of a second single family dwelling, subject to the applicant's compliance with the conditions of approval as specified in the permit. Please review the SMA minor permit and the Conditions of Approval (pp. 4-6). Because of the three historical sites located on parcel 91 there are several conditions requiring the performance of requirements for the documentation and legal recordation of archaeological preservation easements.

To comply with the recordation requirements on parcel 91, the approved final plat map of this subdivision, Subdivision No. 7022-C (final approval: June 28, 2000), confirm that the recordation of the archaeological preservation easements is with the State Bureau of Conveyances.

State of Hawaii Department of Land & Natural Resources
BUREAU of CONVEYANCES
P.O. Box 2867, Honolulu, HI 96803
Ph: (808) 587-0134 (Toll free: 974-4000, Ext. 7-0134#)

Fred B. Hopkins and Corrine Hopkins
Page 4
August 29, 2003

Preservation of On-site Historic Sites. Consistent with SMA Rule 9-10H.1, this project does not propose to destroy the three historic sites documented on parcel 91. The applicant proposes to preserve the three historic sites as a part of the property's landscaping feature. Please review the copy of the enclosed document, cited below, approved by the Planning Director (June 26, 2000).

Archaeological Mitigation Plan for Ho'omalulu on Alii Subdivision
TMK: 7-7-04: 02 & 7-7-08: 27 (Report 2079-060100) (June 2000)

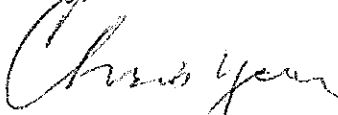
see:	Site 8103	(figure 10)	p. 27
	Site 8104	(figures 11, 12, 13)	p. 30
	Site 21811	(figure 22)	p. 54

According to the State of Hawaii Department of Land & Natural Resources (DLNR) – Historic Preservation Division (HPD), since the three sites are to be preserved as landscaping features data recovery by the applicant is not required. (HPD-Hawaii Island Office: 327-3690 / -3691; Oahu toll free: 974-4000, ext. 2-8015).

Furthermore, in an understanding reached with HPD's Hawaii Island Archaeologist, Patrick McCoy, because of the limited scope of this project and the preservation of the three historical sites as landscaping features this project does not require the preparation of a formal preservation plan by a qualified professional archaeologist.

For any questions on this matter, please call Earl Lucero of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

CJY/EML:mad:pak
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Enclosures: Archaeological Mitigation Plan (Report 2079-060100) (June 2000)
Final Plat Map – Subd. No. 7022-C (June 28, 2000)

Fred B. Hopkins and Corrine Hopkins

Page 5

August 29, 2003

cc: Long Range Planning – Ms Susan Gagorik
— West HI Planning Office

Ms. Holly McEldowney, Acting Administrator
State of Hawaii – DLNR – Historic Preservation Division
601 Kamokila Blvd., Room 555
Kapolei, Hawaii 96707

Ms. MaryAnne Maigret
State of Hawaii - Department of Land & Natural Resources
HISTORIC PRESERVATION DIVISION
74-383 Kealakehe Parkway
Kailua-Kona, HI 96740-2704

**SPECIAL MANAGEMENT AREA MINOR PERMIT
NO. 141**

Approved Development: (1) To establish a startup flower & tree nursery; and, (2) for an additional farm dwelling. The SMA minor permit is approved *subject to the performance of conditions specified in this permit*. Special attention is required of the three historic sites located on parcel 91.

The Planning Director finds that the additional farm dwelling proposal is consistent with the three criteria of Rule 9-10E: according to the applicant's information, it does not exceed the rule's valuation ceiling of \$125,000; the additional farm dwelling will also not have a substantial adverse effect on the Special Management Area; and, the Chief Engineer's review found the proposal in compliance with the Hawaii County Code Chapter 27 - Flood Control.

Applicant's Name: Fred B. Hopkins & Corinne Hopkins

TMK: 7-7-04: 91, Lot 24, Hoomalu on Ali'i Subd., Kaumalumalu, N. Kona, Hawaii Island
Land Area: 5.229 acs.

**Compliance with Objectives and Policies of Chapter 205-A, Hawaii Revised Statutes
regarding the Special Management Area**

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 Zoning Code.

**Compliance with Objectives and Policies of Chapter 205-A, Hawaii Revised Statutes
regarding the Special Management Area**

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 does not conflict with the following objectives of Chapter 205A, Hawaii Revised Statutes 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 tsunamis, 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.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, Hawaii Revised Statutes relating to:
 - ☒ Recreational resources
 - ☒ Historic resources
 - ☒ Scenic and Open Space resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
- ☒ The proposed development conforms with the requirements of Hawaii Revised Statutes Chapter 343, Environmental Impact Statements.

Conditions of Approval

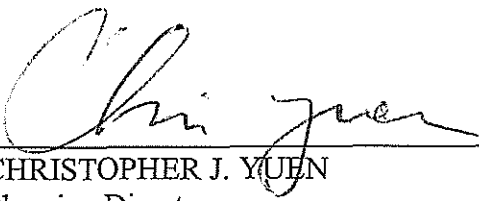
According to SMA guideline Haw. Rev. Stat. sec. 205A-26(1)(A), (2)(A), & (B), all development in the SMA shall be subject to reasonable terms and conditions and any substantial adverse effect is to be minimized to the extent practicable.

1. The applicant(s), its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured within three (3) years from the effective date of this permit.
3. The applicant(s), its successors or assigns shall comply with all other laws, rules, regulations and requirements, including the Department of Public Works.
4. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls, will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigation measures are taken for the discovery with written guidance from the Historic Preservation Division – State of Hawaii - Department of Land and Natural Resources (DLNR).
5. Request(s) for an extension of time shall be submitted to the Planning Director. Pursuant to SMA Rule 9-11E, written requests shall be filed sixty (60) days before the expiration of this permit. The request shall state the length of time requested and the reasons for the time extension.
6. The Planning Director may grant an extension of time upon the following circumstances:
 - a) non-performance is a result of unforeseen conditions or conditions beyond the control of the applicant, successors, assigns, and are not a 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 not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
7. Should any of the conditions not be met or is not substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit or assess SMA penalties.

8. Historic Sites - Archaeological Preservation Easements: Sites 8103, 8104, & 21811. The three historic sites on parcel 91 shall be preserved as landscaping features. Secondly, the three historical sites *shall be recorded* with the State Bureau of Conveyances as Archaeological Preservation Easements: SIHP Site 8103, 8104, and 21811.
9. 25-foot Buffer Zone. Around each of the three historic sites a 25-foot individual buffer zone is required. Prohibited within the buffer zone are landscaping and disturbing the ground; permitted within the buffer zone are weed control or maintenance of the cleared buffer zone area.
10. Temporary Fencing. At the 25-foot buffer line, emplacement of temporary fencing is required during any construction or site grading.
11. Notification Requirement. The Hawaii County Planning Department – West Hawaii Office shall be notified by parcel 91's landowner(s) to conduct a site inspection to confirm emplacement of the temporary fencing.
12. Site Plan Survey Map. A Hawaii state licensed surveyor is to prepare a site plan survey map and written metes and bounds description of parcel 91 showing the locations of the three historic sites. The survey map shall be prepared consistent with the following criteria:
13. The survey map shall be entitled: Archaeological Preservation Easements: SIHP Site 8103, 8104, & 21811, Hoomalu on Ali'i Subd., Kaunahālu, N. Kona, Hawaii Island, TMK: (3) 7-7-04: 91, Lot 24.
14. The survey map shall identify and define the physical location of the three historic sites and the respective 25-foot buffer zone around each site. Each site is to be correctly identified by its respective site number. For example: *Archaeological Preservation Easement SIHP Site 8103*, etc.
15. Submit six copies of the survey map to the Planning Department – Hilo office for compliance review. The survey map determined to be in compliance with the conditions of this SMA minor permit will require the Planning Director's approval stamp and original signature on the six copies.
16. Recordation Requirement. *Before* the Planning Department *can approve a building permit* for an additional farm dwelling on parcel 91, a copy of the *approved* survey map shall be properly recorded with the State of Hawaii Bureau of Conveyances. The department will submit six copies of the survey map to the Bureau, one for recordation with a request for the Bureau to certify the map's recorded status on the remaining five copies. Two of the approved – certified maps are to be retained by the Planning Department, one each for the department's Hilo and West Hawaii offices. Three copies of the approved-certified survey maps are to be returned to the applicant. The applicant shall be responsible for payment of all recording and certification costs.

18. Building Permit Site Plan. The three archaeological preservation easements and the respective 25-foot buffer zones shall be shown and identified on the site plan required for the county building permit application.
19. No Building Easement. According to the enclosed final plat map of this subdivision, Subdivision No. 7022-C, compliance is required with the 10-foot wide no building easement along the frontage of the subdivision's ingress-egress road easement. The no building easement shall be designated on any site plan of a building permit application.

APPROVED:



CHRISTOPHER J. YUEN
Planning Director

9/5/03

Date