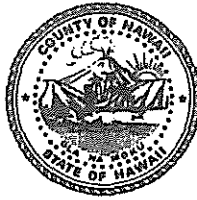


Harry Kim
Mayor



County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

CLM-Debbie
Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

March 21, 2006

Mr. Hartley Phillips
Phillips Family Trust
83-5434 Middle Keei Road
Captain Cook, Hawaii 96704

Dear Mr. Phillips:

SUBJECT: Special Management Area Use Permit Assessment Application
No. 06-000132 (SAA 06-132)
Special Management Area Minor Permit No. 06-000025 (SMM 06-25)
Project: After-the-Fact Landscaping, Clearing, Grubbing and
Filling of Lot in the Special Management Area (SMA)
Tax Map Key: 1-4-068: 046, Vacationland Hawaii, Puna, Hawaii

By this letter we are transmitting the subject SMA Minor Permit to allow for the uses, activities and operations cited in our Notice of Violation letter (ZCV 06-113E) dated February 16, 2006. SMM 06-25 also allows for additional landscaping improvements and maintenance that you have indicated to staff are intended for the subject property.

As stated in ZCV 06-113E, the subject property is known to be within the immediate vicinity of regular tidal flooding of Wai'opae Road and that portions of the property may be flooded during certain high tide events. While we recognize that the shoreline within the vicinity of the subject property has not been located by a certified shoreline survey, we are reasonably certain that some of the uses, activities or operations approved in SMM 06-25 are most likely within the minimum 40' shoreline setback area.

Rule 11-7 of the Planning Department Rules of Practice and Procedure (PD Rules) identifies the structures and activities permitted in the shoreline setback area. Since the uses, activities and operations permitted by SMM 06-25 are not among the list of permitted structures or activities in Rule 11-7 a Determination of Minor Structure or Activity approved in accordance with Rule 11-8 or a Shoreline Setback Variance approved by the Planning Commission is required.

Mr. Hartley Phillips
Phillips Family Trust
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March 21, 2006

Rule 11-3(e), PD Rules, defines a "minor activity" as an activity that does not alter the existing grade of the shoreline setback area and may include activities such as landscaping and minor clearing (grubbing) of vegetation. Pursuant to Rule 11-8, PD Rules, a Determination of Minor Structure or Activity may be issued if the Planning Department determines that the structure or activity will not affect beach processes or artificially fix the shoreline and will not interfere with public access or public views to and along the shoreline.

It is our determination that the after-the-fact hand clearing and grubbing of trees and brush, hand leveling of a rocky area, placement and hand spreading of cinder fill, and the lawn seeding that may have been within the shoreline setback area meets the requirements for a minor activity under Rule 11-8, PD Rules. Therefore, by this letter, the Planning Department determines that the uses, activities and operations approved in SMM 06-25 that may be within the shoreline setback area are minor activities. This determination is subject to the applicant's compliance with the conditions stated in SMM 06-25.

Please be advised that any uses, activities or operations that are conducted seaward (makai) of surface-connected tidal flooding may be considered to be makai of the shoreline by the Department of Land and Natural Resources and, therefore, within the State Land Use Conservation district.

Thank you for your cooperation in these matters. If you have any questions, please feel free to contact CZM Planner Larry Brown at 961-8288, extension 258.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

LMB:cd

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Encl: SMM 06-25

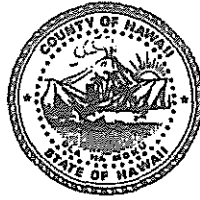
cc w/encl: Long Range Planning Division
CZM Section
Corporation Counsel
Larry Brown, CZM Planner
Robert Usagawa, Zoning Inspector

Mr. Hartley Phillips
Phillips Family Trust
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March 21, 2006

cc: Regulatory Branch
 U.S. Army Engineer District, Honolulu
 Attention: Ms. Lolly Silva
 Building 230
 Fort Shafter, HI 96858

Division of Conservation and Resource Enforcement
DOCARE/DLNR
Attention: Officer Weller
35 Holomua Street
Hilo, HI 96720

Harry Kim
Mayor



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Director

Brad Kurokawa, ASLA
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PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

Special Management Area Minor Permit No. 06-000025

Project: After-the-Fact Landscaping
Applicants: Hartley and Magdalene Phillips
Land Owners: Hartley and Magdalene Phillips
Location: Vacationland Hawaii, Kapoho, Puna, Hawaii
TMK: (3) 1-4-068:046

Applicant's Request

1. Project Description:

After-the-fact hand clearing of brush, trees and rubbish, minor grading by use of hand tools only, placing and spreading of cinder fill material, and planting of grass lawn area on a portion of the subject parcel. Anticipated ongoing uses, activities and operations include additional plantings of trees, shrubs or flowers and landscaping maintenance.

2. Purpose of Project:

The purpose of the project is to create a landscaped yard to be used in connection with the owner's single-family dwelling situated on the adjacent Parcel 62.

3. Project Valuation: \$500.00

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(i) and (ii), relating to the Special Management Area, "development" includes the placement of any solid material or the grading, removing, dredging, mining, or extraction of any materials. This includes the placement of fill material or planting of vegetation and the removal of vegetation, soil or rock within the SMA.

Therefore, the proposed project requires a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** The subject property is designated Urban by the State Land Use (SLU) Commission.
2. **General Plan:** The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property for low-density urban uses.
3. **County Zoning:** The subject property is zoned Single-Family Residential (RS-10) by the County of Hawaii.
4. **Special Management Area:** The subject property is located in the SMA.

Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), 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 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 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.
- ☒ 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 205A, 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 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 development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated project cost of approximately \$500 is not in excess of \$125,000.

The Department of Public Works – Engineering Division has reviewed the proposed project for compliance with Chapter 27, Flood Control, of the Hawaii County Code and has submitted the following comments, dated March 13, 2006, regarding the subject SMAA.

"We have reviewed the subject application for compliance with Chapter 27, Flood Control, forwarded by your memo dated March 8, 2006 and have no objections to the request.

The subject parcel located within Flood Zone AE as designated on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Flood Zone AE is the Special Flood Hazard Area inundated by the 100-year flood where base flood elevations have been determined.

Questions may be referred to Kelly Gomes of our Engineering Division at ext. 8327."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 06-000025** is hereby approved to allow for the after-the-fact hand clearing, land altering and landscaping activities identified in the Notice of Violation No. 06-113E (ZCV 06-113E), additional non-land altering landscaping plantings, and for the ongoing maintenance of landscaping improvements.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. 06-000025** 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 all State and County of Hawaii and Federal departments and agencies.
3. As required by the Department of Public Works, the applicant shall obtain a grubbing permit prior to the commencement of any additional tree cutting, clearing or grubbing activities.
4. Prior to the application of any pesticide or herbicides, the applicant shall consult with the State Department of Health regarding any regulations and/or permits applicable to the proposed activities.
5. This permit does not allow for the construction or placement of any structures or for any excavation, grading or filling on the subject property.
6. No use of mechanized heavy equipment, such as bulldozers, backhoes, tractors, trucks, etc, shall be permitted without a prior review under the SMA guidelines.
7. The applicant shall complete the corrective actions specified in ZCV 06-113E as amended in our letter dated March 8, 2006.
8. Should any of the conditions not be met the Planning Director shall initiate procedures to revoke the permit.

APPROVED:


CHRISTOPHER J. YUEN
Planning Director

3/22/06
Date