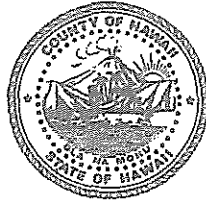


William Kenoi
Mayor



Daryn S Arai
Acting Planning Director

County of Hawaii

PLANNING DEPARTMENT

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

January 12, 2009

Mr. Ralph Blancato,
Mr. Craig Matkin
P.O. Box 1135
Kapaau, HI 96755

Dear Messrs. Blancato and Matkin:

Subject: Special Management Area Use Permit Assessment Application (SAA 08-000380)
Special Management Area Notice of Violation & Order (SMAV/V 2008-165E)
Applicant: Ralph Blancato
Landowner: Ralph Blancato, Craig Matkin
Request: Construct a Farm Utility Building and Other Related Improvements
TMK: (3) 5-4-009:026, Laaumana and Portions of Kapaau, North Kohala, Hawaii

This is to acknowledge receipt on December 29, 2008 of your payment for the complete fine assessed under Special Management Area Notice of Violation & Order (SMAV/V 2008-165E). Please find the enclosed receipt of payment for your records.

In addition, your letter requested to withdraw the subject application (SAA 08-000380). However, in order to satisfy the conditions of the violation, we are issuing a Special Management Area Minor Permit (SMM) for the "as-built" structures. The permit is being issued based upon your previous submittals and the site inspection by Planning Department staff. A new Special Management Area Assessment will need to be submitted for any future proposed development not already covered by the SMM.

According to Hawaii Revised Statutes (HRS) Chapter 205-A-22 and Planning Commission Rule 9-4(10)A(v), "development" includes *Construction, reconstruction, demolition, or alteration of the size of any structure*. Therefore, the construction of the farm utility building and other related structures is considered "development" and

JAN 12 2009

Mr. Ralph Blancato
Mr. Craig Matkin
Page 2
January 12, 2009

requires either a Special Management Area Minor Permit or a Special Management Area (Major) Use Permit. In addition, the proposed activity does not qualify as exempt from the definition of "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. 08-000091 is hereby issued to allow the after-the-fact construction of a farm utility building and other related structures on the subject parcel. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

Lastly, your letter requested a time extension in order to comply with the corrective actions of the Notice of Violation and Order (SMAV 2008-165E). The Planning Department acknowledges your efforts to comply with the corrective action(s) regarding the permitting status of the "as-built" structures. The Department of Public Works Building Division will be the agency to contact regarding the Building Permit requirements for the "as-built" structures. However, we request you continue to communicate the status of the "as-built" structures with the Planning Department staff. We are "**closing**" this Special Management Area (SMA) Violation File.

Please be advised that in the future, if you violate Rule 9 (Special Management Area, of the Planning Commission Rules of Practice and Procedures), you will be liable for:

1. A civil fine not to exceed \$100,000; or
2. The cost of returning the affected environment or ecology within the SMA to the condition existing before the violation.

In addition to any other penalties, you may be liable for a civil fine not to exceed \$10,000 a day for each day the violation persists.

If you require further assistance, please feel free to contact Bethany Morrison of this office at 961-8288, extension 252.

Sincerely,



DARYN S. ARAI
Acting Planning Director

Mr. Ralph Blancato

Mr. Craig Matkin

Page 3

January 12, 2009

Enclosure: Receipt No. 9913
 SMM No. 08-000091
 Memorandum from Department of Public Works

cc: Corporation Council
 County of Hawaii Department of Public Works

xc w/encls: Long Range Planning Division

 Clean Water Branch
 Environmental Management Division
 State Department of Health
 P.O. Box 3378
 Honolulu, HI 96801-3378

xc ltr only: Mr. Abbey S. Mayer, Director
 State of Hawaii, Office of Planning
 Department of Business, Economic Development & Tourism
 P.O. Box 2359
 Honolulu, HI 96804

Special Management Area Minor Permit No. 08-000091

Project: After-the-Fact Construction of a Farm Utility Building and Other Related Structures
Applicant: Ralph Blancato
Land Owner: Ralph Blancato and Craig Matkin
Location: North Kohala, Hawaii
TMK: (3) 5-4-009:026 **Land Area:** 13.166 acres

Applicant's Request

1. Project Description:

The landowner has constructed a farm utility building and other related structures on the parcel. These structures include a shade house, a shed for water catchment, a metal storage building, a native tree windbreak shed and several tarpaulin structures. Also, fences have been erected on the property for a sheep pasture and a pigpen.

2. Purpose of Project:

The parcel is currently being used to for native tree restoration and farming. The buildings are used in connection with the native tree planting and the ongoing farming activities.

3. Project Valuation: \$12,000

4. Determination:

According to Chapter 205A-22, HRS, and Planning Commission Rule No. 9-4(10)(A)(v) relating to the Special Management Area, the "*Construction, reconstruction, demolition, or alteration of the size of any structure*" is defined as "development." Therefore, the construction of the farm utility building and other related structures requires a SMA Minor Permit.

State and County Plans

- 1. State Land Use District:** The subject property is designated Agricultural and Conservation by the State Land Use Commission. The project site is within the Agricultural District.

2. **General Plan:** The subject property is designated Important Agricultural Land and Open by the Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The project site is located in the Important Agricultural Land area.
3. **County Zoning:** The subject property is zoned Agricultural (A-20a) by the County.
4. **Special Management Area:** The subject property is located in the SMA, and it does have frontage along the coastline.
5. **Flood Zone:** According to the Department of Public Works, the parcel is located in Flood Zone "X".

<p style="text-align: center;">Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</p>

Public access will be imposed to enhance access to the shoreline for recreational purposes. There are unimproved trails and roads along the shoreline and down and across Kapa'au Gulch that are presently used by the public. These trails and roads will not be impacted by the construction of the farm utility building and other related structures.

However, to ensure future protection and preservation of the public pedestrian access, an approved public access plan must be implemented. The applicant will be required to develop and implement a public access plan for the subject parcel (TMK: (3) 5-4-009:026) that will provide a continuous traversable public lateral shoreline pedestrian access easement along the shoreline. Development of the subject property should allow for a relocation of the lateral easements in the event of erosion or other conditions that make the easements unsafe.

The public pedestrian access required by Subdivision 7776 and recently Special Management Area Minor Permit No. 08-93 (SMM 08-93) shall continue along the coastal access trail of the subject property and connect to the public pedestrian access required by SMA No. 417. The County will have a perpetual right to obtain an easement on this alignment at no cost.

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, 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 Hawaii County General Plan and Zoning Code.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated project cost of approximately \$12,000 is not in excess of \$125,000.

The enclosed Department of Public Works, Engineering Division memorandum dated November 21, 2008 states the following:

"We reviewed the subject application and our comments are as follows:

We have determined that the subject property is located within Flood Zone "X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

The above information is based on the most recent FIRM for the County of Hawaii. This memo does not imply that the referenced property will be free from flooding or flood damage. Zone "X" is not a designated Special Flood Area. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map. Should a watercourse affect the property, it shall not be altered without first obtaining approval from DPW and a grading permit. A flood study may be required under Chapter 27 of Hawaii County Code for watercourse alterations."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 08-000091** is hereby approved to allow the after-the-fact construction of a farm utility building and other related structures subject to the applicant's/owner's compliance with the conditions of approval as specified below.

Conditions of Approval


The Planning Director has approved **SMA Minor Permit No. 08-000091**, subject to the following conditions:

1. The applicant/owner, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. 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.
3. The applicant/owner shall secure a building permit and complete construction of the farm utility building and other permittable structures within two (2) years from the date of approval of this permit. These structures may include a

shade house, a shed for water catchment, a metal storage building, and a native tree windbreak shed. The applicant/owner shall immediately notify the Planning Department, in writing, upon the completion of the construction activities.

4. The area makai of the 40-foot shoreline setback line shall be kept clear of any rubbish or debris resulting from construction activities at all times.
5. Continuing from the public pedestrian access required by Subdivision 7776, and SMM 08-93, the applicant shall develop and implement a public access plan that provides a continuous traversable public lateral pedestrian access easement along the shoreline, connecting to the shoreline access for SMA 417 (TMK: 5-4-009:020). The attached map (Exhibit A) represents the approximate location of such access. This plan shall be submitted to the Planning Director for approval within one year after the granting of this permit. Approval of this public access plan shall be required prior to granting of any Planning Department permits.
6. All site plans submitted to the Planning Department for any future permits or development shall include the location of the public shoreline pedestrian access easements.
7. The applicant shall submit a plan for the purchase and installation of Shoreline Public Access signage to the Planning Department prior to the granting of any Planning Department permits. Signage should include, but not be limited to, the pedestrian access route and noted hazardous trail and shoreline conditions.
8. 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/owner, 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).
9. 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:



DARYN S. ARAI
Acting Planning Director

11/12/09

Date

Approximate location of Public Access required for SMM 08-91:




PLANNING DEPARTMENT
COUNTY OF HAWAII

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: November 21, 2008

Memorandum

TO : Christopher J. Yuen, Planning Director
Planning Department

FROM : Galen M. Kuba, Division Chief 
Engineering Division

SUBJECT : Special Management Area Use Permit
Assessment Application (SAA 08-000380)
Applicant: Ralph Blancato
Location: Laaumana and Portion of Kapaau, North Kohala
TMK: 3 /5-4-009:026

We reviewed the subject application and our comments are as follows:

We have determined that the subject property is located within Flood Zone "X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

The above information is based on the most recent FIRM for the County of Hawaii. This memo does not imply that the referenced property will be free from flooding or flood damage. Zone "X" is not a designated Special Flood Area. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map. Should a watercourse affect the property, it shall not be altered without first obtaining approval from DPW and a grading permit. A flood study may be required under Chapter 27 of Hawaii County Code for watercourse alterations.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.

KE
copy: ENG-HILO/KONA
PLNG-HILO

