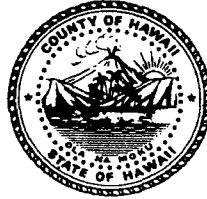


Harry Kim  
*Mayor*

Wil Okabe  
*Managing Director*

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## County of Hawai'i

### PLANNING DEPARTMENT

Michael Yee  
*Director*

Duane Kanuha  
*Deputy Director*

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

May 8, 2019

Ivan Franks  
c/o DDD Partnership  
37 Elm Street  
Woodland, CA 95695

Dear Mr. Franks:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application (SAA-19-001680)**  
**Special Management Area (SMA) Minor Use Permit (SMM-19-000415)**  
**Applicant(s): Ivan Franks**  
**Land Owner(s): DDD Partnership, Davis, CA**  
**Project: After-the-Fact Approval for Land Management Activities**  
**Tax Map Key: (3) 1-3-002:069; Puna District, Island of Hawai'i**

We have reviewed the subject Special Management Area Use Permit Assessment Application (SAA-19-001680) that was submitted to this office on April 25, 2019. This application is being pursued as part of the resolution of a Notice of Violation and Order (NOV) dated January 8, 2019 (File No. ZCV 2018-093E) for unauthorized grubbing, grading, and the installation of a gate within the County of Hawaii Special Management Area (SMA).

**Applicant actions:**

1. Repair and maintenance of unpermitted driveway which included clearing of vegetation, grubbing the top layer of soil, and the creation of a circular driveway extension - total amount of disturbance for this use is 4,000 square feet (sq. ft.);
2. Grubbing and clearing of previously developed areas within parcel which included the removal of fallen trees, clearing of overgrown vegetation, and grubbing of top soil to expose previously emplaced "red dirt" sections – total amount of disturbance is 2,600 sq. ft.;

**MAY - 8 2019,**

3. The continued use of an old, unpermitted, metal entrance gate for property security; and
4. No new land uses or development is being proposed at this time, all work has been completed. All future land uses or development activities will require additional approvals and permits.

The subject parcel is 2.0-acres (87,120 sq. ft.) and is zoned Open (O) by the County of Hawai'i and is designated entirely within the State Land Use (SLU) Conservation District by the State of Hawai'i Land Use Commission. According to the County of Hawai'i General Plan 2005 (as amended) Land Use Pattern Allocation Guide (LUPAG) map, the subject parcel is zoned as Open Area (ope).

The entire parcel is located within the Special Management Area (SMA) with a portion of the parcel located within the "shoreline area" as defined by Hawai'i Revised Statutes (HRS) §205A-41. While a portion of the parcel is located in the "shoreline area", the requirement to submit a current Certified Shoreline survey is waived by the Director of the Planning Department for the above-listed proposed activities as the proposed activities occur well inland on the subject parcel.

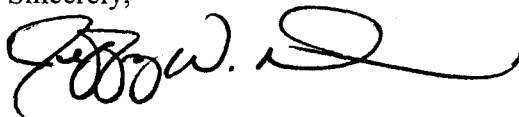
**Special Management Area Determination:**

According to Hawai'i Revised Statutes (HRS) §205A-22, and Planning Commission (PC) Rule No. 9-4 (e)(1)(E) relating to Special Management Area (SMA), "*Placement or erection of any solid material or any gaseous, liquid, solid or thermal waste*" and "*Grading, removing, dredging, mining, or extraction of any materials,*" is defined as "development." Therefore, the proposed grubbing, grading, landscaping, and the installation of a metal entrance gate for the driveway is considered "development" and requires a review against the SMA rules and regulations, and requires an SMA Minor Permit.

We find that the actions described above will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA. Therefore, pursuant to Planning Commission Rule Section 9-10(e), Special Management Area, Minor Permit No. SMM-19-000415, is hereby issued for the project as described above. It is the applicant's responsibility to read and comply with the conditions listed in the enclosed permit.

If you have any questions, please contact Alex J. Roy, M.Sc. of this office at (808) 961-8140.

Sincerely,



*RM*  
MICHAEL YEE  
Planning Director

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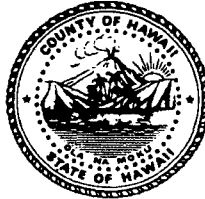
Ivan Franks  
c/o DDD Partnership  
May 8, 2019  
Page 3

Enclosures: SMM-19-000415  
Receipt for Application Fee (SAA-19-001680)

cc w/Encls.: Administrative Permits Division (*via email*)

cc ltr. only: Mrs. Mary Alice Evans, Director  
Office of Planning, DBEDT  
State of Hawai'i DBEDT  
P.O. Box 2359  
Honolulu, HI 96804-2359

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Mayor



Michael Yee  
Director

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**Special Management Area Minor Permit No. 19-000415**

**Project:** After the Fact Approval for Land Management Activities  
**Applicant(s):** Ivan Franks  
**Owner(s):** DDD Partnership, Davis, CA  
**Location:** Kaueleau, Puna District, Island of Hawai'i  
**TMK:** (3) 1-3-002:069  
**Land Area:** 2.0 acres

**Applicant's Request**

**1. Project Description:**

After-the-Fact approval for work conducted on subject parcel:

- A. Repair and maintenance of unpermitted driveway which included clearing of vegetation, grubbing the top layer of soil, and the creation of a circular driveway extension - total amount of disturbance for this use is 4,000 square feet (sq. ft.);
- B. Grubbing and clearing of previously developed areas within parcel which included the removal of fallen trees, clearing of overgrown vegetation, and grubbing of top soil to expose previously emplaced "red dirt" sections – total amount of disturbance is 2,600 sq. ft.;
- C. The continued use of an old, unpermitted, metal entrance gate for property security; and
- D. No new land uses or development is being proposed at this time, all work has been completed. All future land uses or development activities will require additional approvals and permits.

- 2. Purpose of Project:** The objective of the work conducted on this parcel, which included the placement of a metal gate, clearing and grading of the driveway and "utilitarian" spaces, and minor landscaping, was done to provide safe access to the parcel for land management activities, as well as supporting native vegetation, and reducing mosquito populations by improving air flow through the parcel.

**3. Project Valuation:** \$4,000

- 4. Determination:** According to Chapter 205A-22, Hawai‘i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4 (e)(1)(A) and (B) relating to Special Management Area (SMA): “*Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste*”, and “*grading, removing, dredging, mining, or extraction of any materials*” is defined as “development.” Therefore, the clearing, grubbing, landscaping and construction of a metal gate is considered “development” and requires a review against the Special Management Area rules and regulations and requires an SMA Minor Permit.

<b>State and County Plans</b>
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- 1. State Land Use District:** The parcel is designated Conservation by the State Land Use Commission.
- 2. General Plan:** The parcel is designated as Open Area (ope) by the Hawai‘i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
- 3. County Zoning:** The parcel is zoned Open (O)
- 4. Special Management Area:** The subject parcel is located in the SMA; no portion of the work conducted is located within the “shoreline area” as defined by Section 205A-41, Hawai‘i Revised Statutes (HRS).
- 5. Flood Zone:** Zone X (Area of minimal flood hazard) and VE (Coastal areas with a 1% chance of flooding)

<b>Compliance with Objectives and Policies of Chapter 205A, Hawai‘i Revised Statutes (HRS), Regarding the Special Management Area</b>
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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 Hawai‘i 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 tsunami, 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

1. 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.
2. The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.
3. The estimated project cost of \$4,000 for the land management activities are not in excess of \$500,000.

### Approved Uses, Activities and Operations

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. SMM-19-000415** is hereby approved for the after-the-fact activities on the parcel which included:

1. Repair and maintenance of unpermitted driveway which included clearing of vegetation, grubbing the top layer of soil, and the creation of a circular driveway extension - total amount of disturbance for this use is 4,000 square feet (sq. ft.);
2. Grubbing and clearing of previously developed areas within parcel which included the removal of fallen trees, clearing of overgrown vegetation, and grubbing of top soil to expose previously emplaced "red dirt" sections – total amount of disturbance is 2,600 sq. ft.;
3. The continued use of an old, unpermitted, metal entrance gate for property security; and
4. No new land uses or development is being proposed at this time, all work has been completed. All future land uses or development activities will require additional approvals and permits.

### Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. SMM-19-000415**, subject to the following conditions:

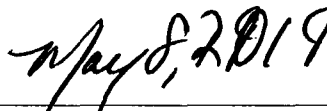
1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations, including the State of Hawai'i, Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL).

3. The applicant shall coordinate any future land use activities through the DLNR-OCCL.
4. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
5. Best Management Practices (BMP) must be followed to ensure the grounds surrounding the project area are kept clear of any rubbish or debris.
6. Any further uses, activities or operations proposed for the subject property shall require further review and approval as provided under HRS Chapter, and Rule 9 of Planning Commission Rules of Practice and Procedure.
7. In the unlikely event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, 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 (DLNR-SHPD) at (808) 933-7651. The applicant shall also notify the Planning Department immediately after contacting the DLNR-SHPD.
8. 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.

If you have any questions, please feel free to contact Alex J. Roy. M.Sc. at (808) 961-8140.

APPROVED:

  
*Ma* MICHAEL YEE  
Planning Director

  
Date