

ALAN M. ARAKAWA
Mayor

MICHELE CHOUTEAU MCLEAN
Director

JOSEPH W. ALUETA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING
September 18, 2018

RECEIVED
2018 SEP 18 AM 9:51
OFFICE OF THE MAYOR

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Elle Cochran, Chair
and Members of the Infrastructure and
Environmental Management Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Mayor Date

Dear Chair Cochran and Members:

SUBJECT: TRAFFIC SAFETY AND ENVIRONMENTAL CONCERNS, MAUI, HAWAII; TMKS: (2) 2-1-005:026 (2) 2-1-005:129 THROUGH (2) 2-1-005:139 (IEM-80) (RFC 2018/0085)

The Department of Planning (Department) has received your letter dated August 31, 2018 asking for information regarding the subject topic and parcels. Your requests and the Department's responses follow:

1. *What is the zoning of the above-mentioned parcels? Has a change in zoning occurred?*

The parcels you identified are currently zoned AG-Agriculture. There has been no change in zone for any of the parcels after Chapter 19.30A (AG-Agriculture District) of the Maui County Code was adopted by Ordinance 2749, effective December 31, 1998.

2. *Provide any existing farm plans for the above-mentioned parcels.*

Please see **Exhibit 1** for the farm plan for parcel (2) 2-1-005:135. There are no farm plans for the other parcels.

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Elle Cochran, Chair
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3. *Explain why the projects which were issued SMA minor permits, specifically for the parcels identified for real property tax purposes as tax map keys (2) 2-1-005:135 and 108, are not considered "development" pursuant to Hawaii Revised Statutes Section 205A-22, although they include grading, removing, dredging, mining, or extraction.*

Special Management Area (SMA) Exemption SM5 2015/0123 (**Exhibit 2**) was issued for the development of a farm dwelling on parcel TMK (2) 2-1-005:135. The exemption was issued based upon the statement in Hawaii Revised Statutes (HRS) 205A-22 that "*Development*" does not include the following: (1) *Construction of a single family dwelling that is not a part of a larger development.* "Not a part of a larger development" is interpreted to mean development of other dwellings, not including one accessory dwelling unit (ohana).

SMA Minor Permit SM2 2016/0079 (**Exhibit 3**) was issued for an access gate on parcel TMK (2) 2-1-005:108 for the benefit of TMK (2) 2-1-005:135. The SMA minor permit acknowledges that the action is a "development" pursuant to HRS 205A-22 and is appropriately conditioned.

SMA Minor Permit SM2 2017/0017 (**Exhibit 4**) was issued for a brackish water disposal well on parcel TMK (2) 2-1-005:135. The SMA minor permit acknowledges that the action is a "development" pursuant to HRS 205A-22 and is appropriately conditioned.

4. *The Special Management Area ("SMA") Rules for the Maui Planning Commission provide the Director review the impacts of proposed projects in order "to preserve, protect, and where possible restore the natural resources of the coastal zone." Please explain whether SMA assessments and permits may be revisited and re-reviewed if further information is obtained which indicates projects may, comprehensively, qualify as "development" or there may be adverse environmental impacts.*

Neither the Special Management Area Rules for the Maui Planning Commission (Rules), nor HRS 205A expressly provide a mechanism to revisit or re-review after an exemption or minor permit are issued. However, if new information comes available after an exemption or minor permit are issued, the Department will consider whether any further action is warranted Section 12-202-26 of the Rules provides for an appeal to the Planning Commission of the Director's decision. See **Exhibit 5** for complete language of Section 12-202-26 of the Rules.

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Elle Cochran, Chair
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5. *By correspondence dated August 16, 2018, you state "no inspection reports or enforcement letters have been filed, as the subject parcels are fenced and gated with "no trespassing" signs posted; no inspections could be conducted." Given the community complaints, has the Department worked with Corporation Counsel to take steps to conduct inspections for the subject parcels?*

In situations where there are signs or owners prohibiting access, inspectors are obligated to respect being denied entry. Corporation Counsel has informed us that the only other option is to pursue a search warrant which would be difficult given the situation. However, the Department is obtaining a right-of-entry (ROE) from the property owner via their consultant. We anticipate receipt of the ROE by the end of this month.

Should you have any questions, please feel free to transmit them to the Department of Planning via transmittal through the Office of the Mayor.

Sincerely,



MICHELE MCLEAN
Planning Director

Attachments

xc: Joseph Alueta, Deputy Planning Director (PDF)
Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
David Raatz, Administrative Planning Officer (PDF)
Jeffrey P. Dack, Current Planning Supervisor (PDF)
Keith C. Scott, Staff Planner (PDF)
Jay Arakawa, Supervising Zoning Inspector (PDF)

MCM:KCS:lk

Project File

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COUNTY OF MAUI
 DEPARTMENT OF PLANNING
 2200 MAIN STREET, SUITE 315
 WAILUKU, HAWAII 96793
 Telephone: (808) 270-7735
 Facsimile: (808) 270-7634
 E-mail: planning@mauicounty.gov

DEPT. OF PLANNING
 COUNTY OF MAUI

MAR 12 2015

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FARM PLAN APPLICATION

15/1203

APPLICATION FORM

Please print legibly or type the following.

APPLICANT INFORMATION					
Applicant's Name(s):	Evans Holdings, Inc.			Email:	markjohnson@hawaii.rr.com
Address:	1100 Alakea St, Suite 2100 Honolulu, HI 96813				
Phone Number(s):	(bus)	808-275-5755	(hm)	(cel)	(fax)
Signature(s):				Date:	3/6/15
CONTACT INFORMATION					
Contact Name(s):	Nohelani Uu, Frampton & Ward			Email:	nohelani@fwmaui.com
Address:	2035 Main Street, Suite 1 Wailuku, HI 96793				
Phone Number(s):	(bus)	809.2224	(hm)	(cel)	(fax)
Signature(s):				Date:	3/11/2015
OWNER INFORMATION					
Owner's Name(s):	Evans Holdings, Inc.			Email:	markjohnson@hawaii.rr.com
Address:	1100 Alakea St, Suite 2100 Honolulu, HI 96813				
Phone Number(s):	(bus)	808-275-5755	(hm)	(cel)	(fax)
Signature(s):				Date:	3/6/15
PROPERTY/PROJECT INFORMATION					
Tax Map Key No:	2-1-005:135			Total Lot Area:	29.251 acres
Address/Location:	7191 Makea Road, Kihei, HI 96753				
State Land Use District Boundary Designation:	Agricultural District				
Community Plan Designation:				County Zoning:	Agricultural District
Building Permit Application No. & Description:	BT 2014/1691				
Bed & Breakfast Permit Application No. & Description:					
FOR COUNTY USE ONLY					
Farm Plan Permit No:	FRMP 2015/0033				
Reviewed by:				Date:	3/20/15
Approved by:				Date:	3/20/15
For: WILLIAM R. SPENCE PLANNING DIRECTOR					

MAR 12 2015

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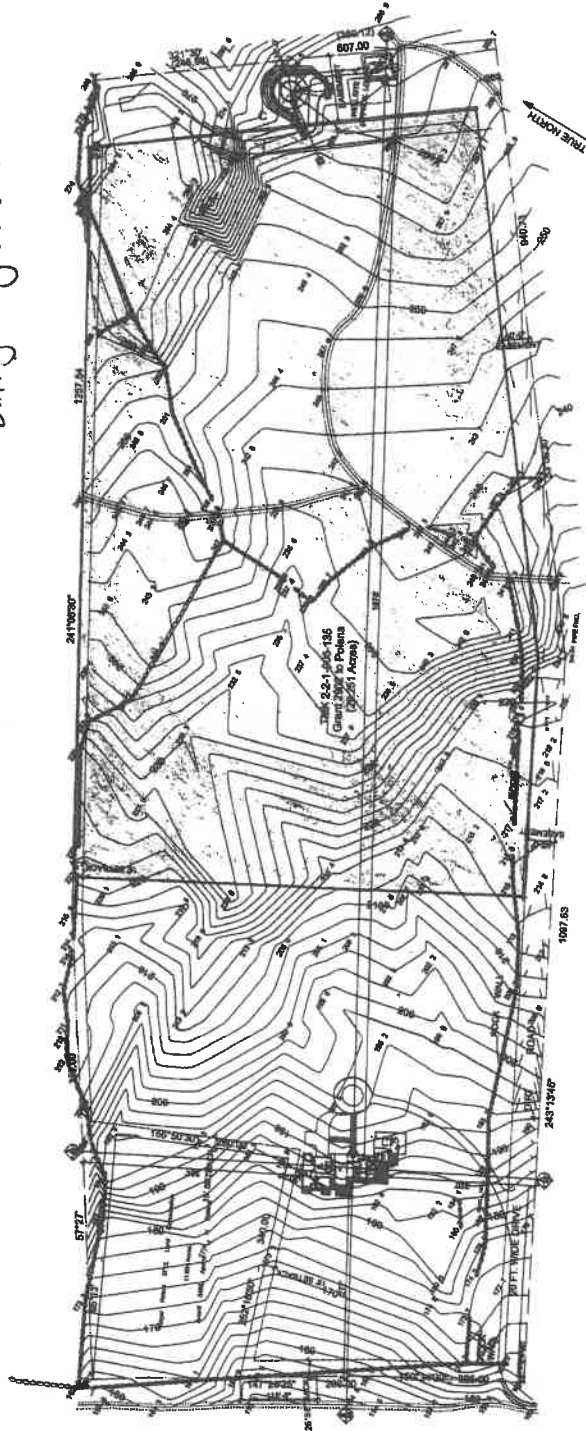
Evans Holdings BT 2014/1691
Farm Plan, Agricultural Land Conservation
TMK: 2-1-005:135

Regarding Evans Holding's (B 2014/1691) will keep fifty-one percent of the above reference TMK as Agricultural Land Conservation (ALC). ALC as defined in the Maui County Code Chapter 19.04.040, "the planting of soil-nourishing plants and trees to achieve soil conservation and environmental benefits; including but not limited to soil-nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration." Located on the project site are wili wili trees and buffelgrass, all existing, both wili wili trees and buffelgrass are addressed in the Pacific Islands Area Vegetative Guide referenced on page 60 and 21, 23, and 55, respectively. Wili wili trees once faced a devastating moth and are now thriving on project site, this site serves as a habitat restoration for the wili wili trees. Deer also frequent the site and thus the existing trees and grass serve as a habitat restoration for the deer population.

Evans Holdings, Inc.

TMK: 2-1-005:135

Agricultural Land Conservation
Wiliwili Trees and Buffelgrass
as referenced in Pacific Islands Area Vegetative Guide
pages: Wiliwili - pg. 60
Buffelgrass pg 21, 23, 55



Site Plan
Scale 1" = 40'

DEPT. OF PLANNING
COUNTY OF MAUI

MAR 12 2015
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EXHIBIT 1

ALAN M. ARAKAWA
Mayor

MICHELE CHOUTEAU MCLEAN
Director

JOSEPH W. ALUETA
Deputy Director



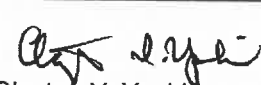
COUNTY OF MAUI
DEPARTMENT OF PLANNING

CORRECTED SPECIAL MANAGEMENT AREA EXEMPTION (SM5)
September 14, 2018

APPLICANT: Dave Ward 2035 Main Street Wailuku, HI 96793	OWNER: Evans Holdings, Inc. 1100 Alakea Street, Suite 2100 Honolulu, HI 96813
PROJECT LOCATION: 7191 Makena Rd , Kihei HI 96753	PROJECT DESCRIPTION: Main Farm Dwelling, site work and entry drive from Makena Road
TAX MAP KEY NO: (2) 2-1-005:135, :108, :129, :131, and :132	BUILDING PERMIT APPL NO: B T20141691
SMA APPLICATION NO: SMX 20150030	SMA EXEMPTION NO: SM5 20150123

The proposed construction was determined to be:
Construction of a single family residence that is less than seven thousand five hundred square feet (7,500 sf.) of floor area and is not part of a larger development.

Pursuant to §22, Chapter 205A Hawaii Revised Statutes ("HRS"), as amended, and the rules of the Planning Commissions in Maui County, the proposed activity was evaluated and determined to NOT be a development. Therefore, the activity is EXEMPT from the requirements of Chapter 205A, HRS.

Reviewed by:	Keith Scott, Staff Planner	Date: May 31, 2018
Approved by:	 Clayton Y. Yoshida Planning Program Administrator	For: MICHELE MCLEAN Planning Director
		Date: 9/14/18

File: Rulan Waikiki, Land Use & Building Plans Examiner (PDF), Keith Scott, Staff Planner (PDF), Applicant, SM5 20150123 (KIVA; Project File), John Rapacz, Planning Program Administrator (PDF), Michele McLean, Deputy Planning Director (PDF)

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EXHIBIT 2

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 15, 2018

Ms. Nohelani Uu
Frampton & Ward LLC
2035 Main Street, Suite 1
Wailuku, Hawaii 96793

Dear Ms. Uu:

SUBJECT: CORRECTED SPECIAL MANAGEMENT AREA (SMA) ASSESSMENT FOR INSTALLATION OF A REPLACEMENT GATE AND FENCE LOCATED AT 7191 MAKENA ROAD, KIHEI, ISLAND OF MAUI, HAWAII; TMK: (2) 2-1-005:135 AND (2) 2-1-005:108 (SMX 2016/0253) (SM2 2016/0079)

This approval letter is hereby corrected by including the parcel identified as TMK (2) 2-1-005:108 and encompassing amendments approved by letter dated November 1, 2017.

In response to your application received on May 27, 2016, and in accordance with the SMA Rules for the Maui Planning Commission (Commission), Section 12-202-12, a determination has been made relative to the above project that:

1. The project is not a development, pursuant to Section 205-A-22 and may be issued a SMA Minor Permit;
2. The project has a valuation not in excess of \$500,000.00; (Valuation: \$36,000.00)
3. The proposed scope of work consists solely of replacing an existing gate, fence and utility pole and installation of an additional utility pole;
4. The project has no significant adverse environmental or ecological effects, provided Best Management Practices (BMPs) are implemented; and
5. The project is consistent with the objectives, policies, and SMA guidelines set forth in the Hawaii Revised Statutes (HRS), Chapter 205-A, and is consistent with the County General Plan and Zoning.

In consideration of the above determination, you are hereby granted a SMA Minor Permit (SM2 2016/0079), subject to the following conditions:

1. That replacement is according to plans titled "Replacement Gate for Residence of Evans Holdings LLC", prepared by the Applicant and dated April 29, 2016.

2. That BMPs shall be implemented to ensure water quality and marine resources are protected. No construction materials shall be stockpiled in the aquatic environment. All construction-related materials shall be free of pollutants and placed or stored in ways to avoid or minimize disturbance. No debris, petroleum products or deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter near shore waters. Any turbidity and siltation generated from activities proposed at the site shall be minimized and contained in the immediate vicinity of construction through the use of effective silt containment devices. Construction during adverse weather conditions shall be curtailed to minimize the potential for adverse water quality impacts. Appropriate measures to minimize dirt and water runoff, noise, and dust must be used.
3. That a building permit shall be obtained as applicable from the Department of Public Works Development Services Administration.
4. That construction of the improvements shall be initiated by **July 31, 2018**, and shall be completed within one (1) year of said initiation.
5. That in the event historic resources, including human skeletal remains, structural remains, cultural deposits, or lava tubes are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD), Maui Section, shall be contacted immediately at (808) 243-1285. Work shall not continue until cleared by DLNR-SHPD.
6. That full compliance with all other applicable governmental requirements shall be rendered.

Furthermore, in accordance with the Shoreline Rules for the Commission, Sections 12-203-3, 12-203-6, 12-203-10, 12-203-11, and 12-203-12, a determination has been made relative to the above-referenced project that:

1. The site is not a shoreline property and is subject to the Commission Shoreline Rules;
2. The work will take place outside the shoreline setback area; and
3. The proposed action will not have an adverse impact on a flood zone or streamway; and, according to review by the Zoning Administration and Enforcement Division, no flood development permit is required.

Accordingly, no Shoreline Setback Approval is required.

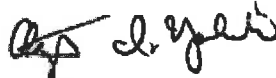
Ms. Nohelani Uu
June 15, 2018
Page 3

Moreover, the Department of Planning (Department) finds that the proposed action does not trigger compliance with environmental review because it does not include the use of a shoreline area.

In summary, the Department grants a SMA Minor Permit (SM2 2016/0079) for the work described in your SMA Assessment Application (SMX 2016/0253). No Shoreline Setback Approval or environmental review are required.

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Keith Scott at keith.scott@mauicounty.gov or at (808) 463-3867.

Sincerely,



CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

for WILLIAM SPENCE
Planning Director

xc: Michele Chouteau McLean, Deputy Planning Director (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Keith C. Scott, Staff Planner (PDF)
Project File

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EXHIBIT 3

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING
February 3, 2017

Ms. Nohelani U`u
Frampton and Ward
2035 Main Street, Suite 1
Wailuku, Hawaii 96793

Dear Ms. U`u:

**SUBJECT: SPECIAL MANAGEMENT AREA (SMA) ASSESSMENT FOR
INSTALLATION OF A DISPOSAL WELL LOCATED AT
7191 MAKENA ROAD, KIHEI, ISLAND OF MAUI, HAWAII;
TMK: (2) 2-1-005:135 (SMX 2017/0003) (SM2 2017/0017)**

In response to your application received on January 9, 2017, and in accordance with the SMA Rules for the Maui Planning Commission (Commission), Section 12-202-12, a determination has been made relative to the above project that:

1. The project is a development, pursuant to Section 205-A-22 and may be issued a SMA Minor Exemption;
2. The project has a valuation not in excess of \$500,000.00;
(Valuation: \$220,000.00)
3. The proposed scope of work consists solely of construction of a disposal well for salt water produced in conjunction with water treatment, installation of associated equipment and construction of an enclosure;
4. The project has no significant adverse environmental or ecological effects, provided Best Management Practices (BMPs) are implemented; and
5. The project is consistent with the objectives, policies, and SMA guidelines set forth in the Hawaii Revised Statutes (HRS), Chapter 205-A, and is consistent with the County General Plan and Zoning.

In consideration of the above determination, you are hereby granted a SMA Minor Permit (SM2 2017/0017), subject to the following conditions:

1. That construction is according to plans titled "R.O Brine Disposal Well for Evens Holdings LLC," prepared by Dee Bell, Architect and dated January 24, 2017.

2. That BMPs shall be implemented to ensure water quality and marine resources are protected. No construction materials shall be stockpiled in the aquatic environment. All construction-related materials shall be free of pollutants and placed or stored in ways to avoid or minimize disturbance. No debris, petroleum products or deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter near shore waters. Any turbidity and siltation generated from activities proposed at the site shall be minimized and contained in the immediate vicinity of construction through the use of effective silt containment devices. Construction during adverse weather conditions shall be curtailed to minimize the potential for adverse water quality impacts. Appropriate measures to minimize dirt and water runoff, noise, and dust must be used.
3. That a building permit shall be obtained as applicable from the Department of Public Works Development Services Administration.
4. That construction of the improvements shall be initiated by **January 31, 2019**, and shall be completed within one (1) year of said initiation.
5. That work shall be undertaken pursuant to the "Data Recovery Plan for Sites 50-50-14-7891, -7908, 7911, -7914 and Preservation Plan for Sites 50-50-14-7892, -7917 on Approximately 27-acres in Makena, Mo'omuku Ahupua'a, Makawao district, Island of Maui, Hawaii [TMK (2) 2-1-005:134, 135 por. and 136], approved by the State Historic Preservation division by letter dated June 16, 2015 (Log 2015.02343, Doc No 1506MD19).
6. That full compliance with all other applicable governmental requirements shall be rendered.

Furthermore, in accordance with the Shoreline Rules for the Maui Planning Commission, Sections 12-203-3, 12-203-6, 12-203-10, 12-203-11, and 12-203-12, a determination has been made relative to the above-referenced project that:

1. The site is not a shoreline property and is not subject to the Maui Planning Commission Shoreline Rules;
2. The work will take place outside the shoreline setback area.
3. The proposed action will not have an adverse impact on a flood zone or streamway; and a flood development permit is not required.

Accordingly, no Shoreline Setback Approval is required.

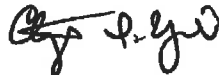
Moreover, the Department finds that the proposed action does not trigger compliance with environmental review.

Ms. Nohelani U'u
February 3, 2017
Page 3

In summary, the Department grants a SMA Minor Permit (SM2 2017/0017), for the work described in your SMA Assessment Application (SMX 2017/0003). No Shoreline Setback Approval or Environmental Review are required. PLEASE NOTE THAT OTHER PERMITS OR APPROVALS MAY BE REQUIRED.

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Keith Scott by email at keith.scott@mauicounty.gov or by phone at (808) 463-3867.

Sincerely,



CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

for WILLIAM SPENCE
Planning Director

xc: John S. Rapacz, Planning Program Administrator (PDF)
Keith C. Scott, Staff Planner (PDF)
CZM File (SMX/SM2)
2017/SM2 Minor Permit File
General File

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EXHIBIT 4

TITLE MC – 12

**DEPARTMENT OF PLANNING
SUBTITLE 02**

MAUI PLANNING COMMISSION

CHAPTER 202

SPECIAL MANAGEMENT AREA RULES

§12-202-26 Appeal of director's decision; filing the notice of appeal. (a) Appeal of the director's decision may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director's written decision, or, where the director's decision is not required by the commission or these rules to be served upon appellant, not later than ten days after the meeting at which the commission received notification of the director's decision. The notice of appeal shall be filed in accordance with Section 12-201-20 of the rules of practice and procedure for the Maui Planning Commission, at the commission's next regularly scheduled meeting