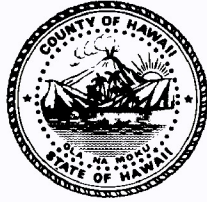


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## County of Hawai'i PLANNING DEPARTMENT

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March 06, 2023

Cullen Burgess  
P. O. Box 570  
Hōlualoa, HI 96725  
VIA EMAIL

Dear Mr. Burgess,

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application -  
AMENDED  
(SAA-19-001695 - AMENDED)  
(PL-INT-2023-0004487)**

**Applicant: Cullen Burgess**

**Landowner: David & Karen Parreira Family Trust**

**Project: Pool**

**Tax Map Key: (3) 7-8-014:019**

**Location: Kahalu'u Beach Lots, North Kona District, Island of Hawai'i**

We have reviewed the subject request to amend Special Management Area (SMA) Use Permit Assessment Application (SAA-19-001696), originally submitted to this office on June 14, 2019. Staff notes that on December 17, 2019, approval was granted under SAA-19-001696 for a single-family residence and related improvements on the subject parcel.

The subject 16,335 square-foot parcel is zoned Resort-Hotel (V-1.25) by the County and designated Urban District by the State Land Use Commission. The parcel is designated as "Medium Density Urban" (mdu) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.

**Proposed Project:**

Construct a new in-ground swimming pool, approximately 40-feet by 15-feet, includes pool decking and steps.

**Shoreline Area:**

Pursuant to Hawai‘i Revised Statutes (HRS) 205A-22 and County of Hawai‘i Planning Department (PD) Rules of Practice and Procedure Section 11-5(a) Establishment of Shoreline Setback Lines, “Except as otherwise provided in this section, all lots which abut the shoreline shall have a minimum shoreline setback line of forty feet”. The parcel is located entirely within the Special Management Area (SMA), however, it is not considered a “shoreline parcel” as it is mauka (landward) of Ali‘i Drive.

**Special Management Area Determination:**

1. Pursuant to Hawai‘i Revised Statutes (HRS) §205A-22, as amended, and Planning Commission Rule 9-4(e)(2) relating to the Special Management Area, “*Development means any of the [listed] uses, activities, or operations on land or in or under water within the special management area.*” According to the application, the following definitions of “Development” can be applied to the proposed use:
  - *Placement or erection of any solid material or any gaseous, liquid, solid or thermal waste.*
  - *Grading, removing, dredging, mining, or extraction of any materials; and*
  - *Construction, reconstruction, demolition, or alteration of the size of any structure.*
2. Pursuant to Hawai‘i Revised Statutes (HRS) §205A-22, as amended, “Development” does not include the following uses, activities, or operations, and therefore is determined to be exempt from the definition of “Development”:
  - *Structural and non-structural improvements to existing single-family residences, where otherwise permissible.*
3. Pursuant to Planning Commission Rule 9-4(e)(4), “*whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as “Development” for the purposes of this rule.*”
  - Based on the information provided, the Director finds that the proposed development of a new in-ground swimming pool will not have a cumulative impact, or significant adverse environmental or ecological effect on the Special Management Area.

Please note that any substantive changes to the proposed improvements, as well as any subsequent phases or activities may require further review by this office and possibly the submittal of another SMA Use Permit Assessment Application.

**Future Special Management Area Determinations:**

While further review of the proposed activities against the Special Management Area rules and regulations will not be required at this time, all other applicable Zoning and Building Code requirements must be satisfied.

Additionally, pursuant to Planning Commission Rule 9-10(g), *“the Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a substantial adverse effect on the Special Management Area.”* The Director has added the following conditions for the proposed project:

**Director’s Conditions:**

1. The applicant(s), its successor(s), or assign(s) (“Applicant”) 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. Other than the proposed project as described in this determination, no further work is permitted under this approval.
4. The Applicant shall secure building permits for the proposed project within two (2) years from the date of the determination. If building permits have not been secured within that two (2) year period, this determination is automatically null and void, and a new Special Management Area Assessment Application must be submitted for review and approval.
5. The proposed work shall comply with the requirements of Hawai‘i County Code (HCC) Chapter 10, Erosion and Sedimentation Control.
6. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai‘i County Code.
7. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

8. Any further development, including but not limited to, the construction of structures or improvements not included in this determination shall require further review and approval as provided under Chapter 205A, HRS, and Rule 9, Planning Commission Rules of Practice and Procedure.
9. That in issuing this determination, the Department has relied on the information and data that the applicant has provided in connection with this determination. If, subsequent to this determination, such information and data prove to be false, incomplete, or inaccurate, this determination may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings.
10. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this determination or require additional review against the Special Management Area rules and regulations.

If you have any questions, please contact Alex J. Roy of this office at (808) 961-8140 or via email at [Alex.Roy@hawaiiicounty.gov](mailto:Alex.Roy@hawaiiicounty.gov).

Sincerely,

Zendo Kern  
Zendo Kern (Mar 6, 2023 09:53 HST)

ZENDO KERN  
Planning Director

AJR:mads  
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cc via email: David Parreira  
GIS Section