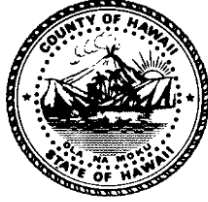


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

February 27, 2023

Steven S.C. Lim
Carlsmith Ball LLP
121 Waiianuenue Ave.
Hilo, HI 96720

Dear Mr. Lim:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(SAA-21-001810)**

Applicant(s): Zibasara LLC
Landowner(s): Mehrdad Ellie Trust (Zibasara LLC)
Project: Subdivision of Lot 305
Tax Map Key: (3) 5-5-007:037
Location: Kahei, North Kohala District, Island of Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (SAA-21-001810), submitted to this office on February 8, 2021, with additional information submitted on March 28, 2022, and August 8, 2022; we apologize for the delay in processing your application.

The subject parcel totals approximately 105.647 acres and is zoned Agricultural 20-acres (A-20a) by the County and designated as both Agriculture and Conservation Districts by the State Land Use Commission. The project area is designated as both Open (ope) and important agricultural lands (ial) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.

The entire parcel is located within the Special Management Area (SMA) as well as located within the "shoreline area" as defined by section 205A-41, Hawai'i Revised Statutes (HRS). Due to the proposed project being a subdivision with no proposed ground disturbance or development, the Director has waived the requirement for a Shoreline Certification for this proposed activity. Staff notes that there is an existing 40-foot-wide public pedestrian access easement located along the entire shoreline.

Proposed Project:

The purpose of the proposed project is to subdivide the subject parcel into four (4) new parcels (lots) (Exhibit 1):

Lot 305-A: 26.882 acres
Lot 305-B: 21.063 acres
Lot 305-C: 21.143 acres
Lot 305-D: 21.363 acres

No other activities or development is proposed under this application.

Shoreline Setback Area Determination:

The entire project area is located within the Special Management Area (SMA) as well as located within the “shoreline area” as defined by section 205A-41, Hawai‘i Revised Statutes (HRS). According to information provided by the applicant, a Shoreline Certification was approved by the Board of Land and Natural Resources (BLNR) on September 25, 1974, which demarcates the shoreline at the “highwater mark” in this area. No additional shoreline certifications have been completed since that time.

The proposed project is for a subdivision of a legal lot of record into four (4) new parcels (lots) as described above. An existing 40-foot-wide easement runs along the entire length of the parcel for public pedestrian access along the shoreline. The proposed action will not alter the existing grade of the shoreline setback area. Nor will there be any changes to the existing pedestrian access easement.

Based on the preceding information, the Planning Department has determined the proposed activity may be permitted in the shoreline setback area without the need for a shoreline setback variance pursuant to Planning Department Rule 11-7(a)(4): *A minor structure or activity approved in accordance with section 11-8.*

Hawai‘i Revised Statutes (HRS) Ch. 343 Determination:

Pursuant to HRS Ch. 343-5(3), an Environmental Assessment (EA) shall be required for actions that propose any use within a shoreline area as defined in HRS Ch. 205A-41. However, in conformance with Hawai‘i Administrative Rules (HAR) Ch. 11-200.1-15(c)(4), *Minor alterations in the conditions of land, water or vegetation* do not require an EA or Ch. 343 review.

Based on the proposed activities described above, this project is considered exempt from the preparation of an EA. No further Ch. 343 review is required.

Chapter 6E-42 Historic Preservation Review:

Based on the request for review submitted to the SHPD on March 20, 2021, SHPD requested that an Archeological Inventory Survey (AIS) of the subject parcel be conducted. SHPD received the draft AIS on January 31, 2022, and subsequently requested revisions to the AIS via HICRIS; the current revised AIS was submitted on February 28, 2022.

SHPD agrees with the site integrity and significance assessment of SIHP Sites # 30911, 31283, 31284, and 31285. SIHP Sites # 30911, 31283, 31284, and 31285 are significant historic properties and SIHP Sites # 30911, 31283 and the portion of #31285 within the project area have been adequately documented and, thus, were recommended for no further work. SHPD agrees. Lastly, SHPD agrees with the recommendation that SIHP Site #31283 be preserved in accordance with a preservation plan that meets the requirements of HAR Ch. 13-277.

By letter dated March 4, 2022, SHPD's determination is "Effect, with agreed upon mitigation commitments" for the proposed project. Staff notes that the applicant is currently working to complete the preservation plan in accordance with SHPD rules and regulations.

Special Management Area Determination:

Pursuant to Hawai'i Revised Statutes (HRS) §205A-22, as amended, and Planning Commission Rule 9-4(e)(1) 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:

- *Change in the density or intensity of use of land, including but limited to the division or subdivision of land.*

Pursuant to Planning Commission Rule 9-4(e)(3): *Any proposed use, activity, or operation listed in Section 9-4(e)(1) shall be deemed to be "Development" until the Director has determined it to be exempted from the definition of "Development."* According to 9-4(e)(2) "Development" does not include the following uses, activities, or operations, and therefore, is determined to be exempt from the definition of "Development":

- *Subdivision of land into lots greater than twenty (20) acres in size.*

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 project as described above is exempt from the definition of "development" and 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 project, 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 Planning Director has added the following conditions for the proposed project:

Planning Director's Conditions:

1. The applicant(s), its successor(s) or assign(s) (Applicant) shall be responsible for complying with all stated conditions.
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 will obtain approval or acceptance for the requested preservation plan in accordance with the State Historic Preservation Division rules and regulations. The preservation plan must be completed prior to any subsequent development on any of the new parcels.
4. The applicant will ensure that the 40-foot public pedestrian access easement (Easement No. 83) remains open and free of obstructions.

5. Other than the proposed project as described in this letter, no further work is permitted under this approval.
6. 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.
7. 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.
8. 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.

If you have questions regarding this document, please feel free to contact Alex J. Roy of this office at (808) 961-8140 or via email at alex.roy@hawaiicounty.gov

Sincerely,


Zendo Kern (Feb 27, 2023 08:24 HST)

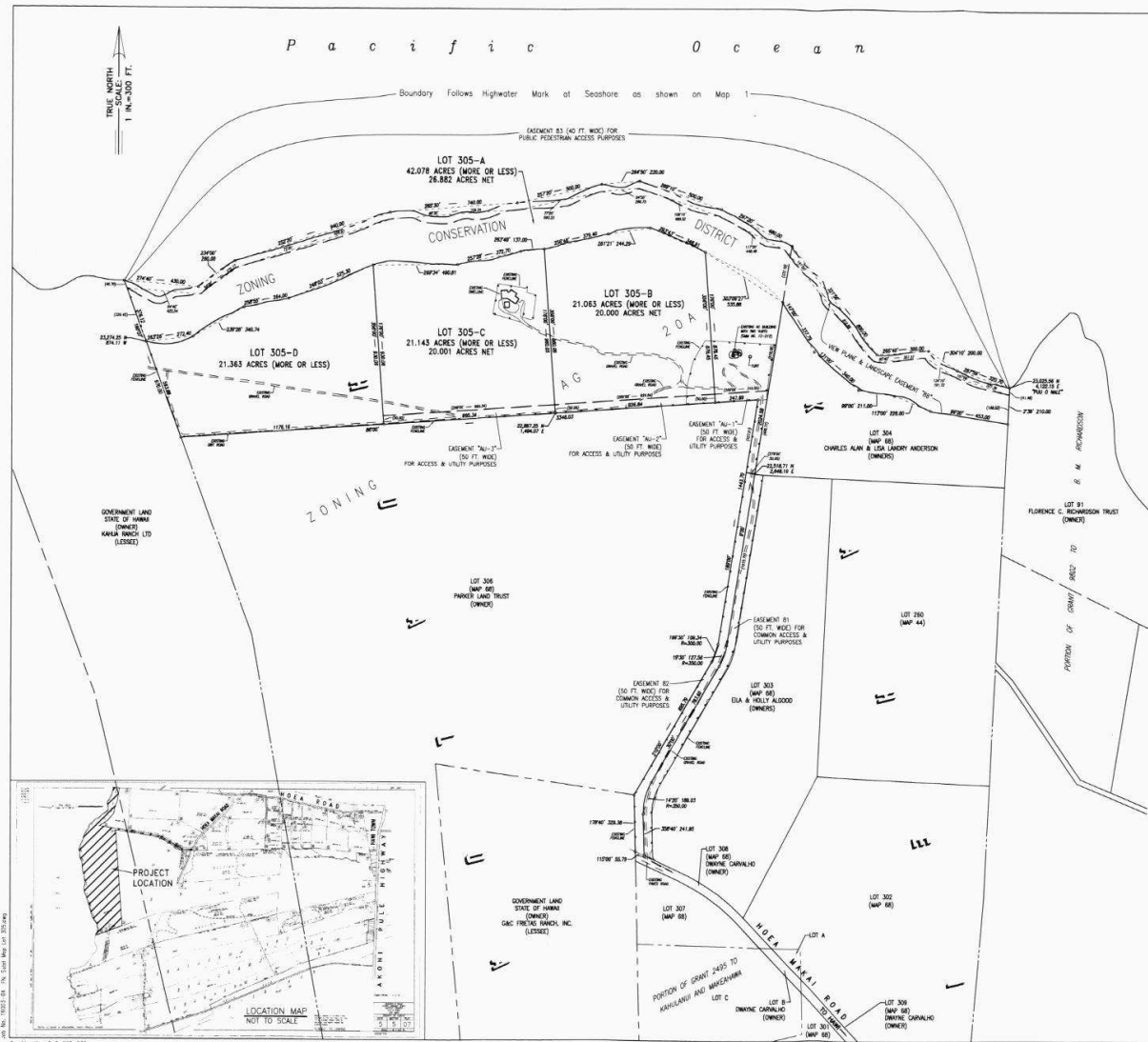
ZENDO KERN
Planning Director

AJR:mads
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Attached: Exhibit 1 – Preliminary Subdivision Plan

cc via email: DLNR-OCCL
GIS Section

P a c i f i c O c e a n



PRELIMINARY

LAND COURT
 STATE OF HAWAII
LAND COURT APPLICATION 1120
 SUBDIVISION OF LOT 305
 AS SHOWN ON MAP 68
 INTO LOTS 305-A, 305-B, 305-C AND 305-D
 AND THE DESIGNATION OF
 EASEMENT AU-1 AFFECTING LOT 305-A,
 EASEMENT AU-2 AFFECTING LOT 305-B AND
 EASEMENT AU-3 AFFECTING LOT 305-C
 SITUATED AT HUALAIA AND KAHAI, NORTH KOHALA,
 ISLAND OF HAWAII, HAWAII

418 Pinal St.
 Suite 202
 Honolulu, Hawaii 96814
 September 29, 2020



CONTROLPOINT SURVEYING, INC.
 By *Alden S. Kauioka*
 ALDEN S. KAUIOKA
 Licensed Professional Land Surveyor
 Certificate Number 6625-12
 Land Court Certificate Number 248
 Exp. Date 04/30/22

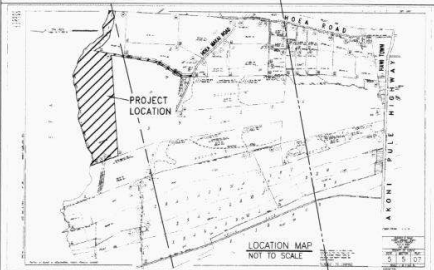
OWNER: ZIBASARA LLC
 TRANSFER CERTIFICATE OF TITLE: (LOT 305)

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
 OF THE LAND COURT DATED
 BY ORDER OF THE COURT.

REGISTRAR OF THE LAND COURT

NOTES:
 AREA OF EASEMENTS:
 EASEMENT "AU-1" FOR ACCESS AND UTILITY PURPOSES IN FAVOR OF LOTS 305B-305D = 0.848 ACRES
 EASEMENT "AU-2" FOR ACCESS AND UTILITY PURPOSES IN FAVOR OF LOTS 305C-305D = 1.064 ACRES
 EASEMENT "AU-3" FOR ACCESS AND UTILITY PURPOSES IN FAVOR OF LOT 305D = 1.142 ACRES

- Notes:
1. Azimuths and coordinates are referred to Government Survey Triangulation Station "PUU O MALE Δ".
 2. Owner: Zibasara LLC
P.O. Box 290148
San Francisco, CA 941280148
 3. Total Acreage 125,647 Acres, proposed 4 lot subdivision.
 4. Water System: Water Well.
 5. Waste Disposal: Proposed lots will be serviced by septic systems.
 6. There are no floodways or waterways on the property.
 7. Property is currently used for livestock grazing and gardening.
 8. Zoning: Mixed, Conservation District and Agricultural A20A as shown.
 9. This property is located in Zone X of the Flood Insurance Rate Map No. 1301660029F, Effective date September 29, 2017.



Map No. 10378-04-17N, State Map No. 10378