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County of Hawai'i PLANNING DEPARTMENT

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January 5, 2023

Roy A. Vitousek III
c/o Cades Schutte LLP
75-170 Hualālai Rd.
Ste. B-303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2022-000135)**

Applicant(s): Roy L. Wickland, Trustee

Landowner(s): Roy L. Wickland Family Trust (1991)

Project: After-the-Fact Improvements to Single Family Residence

TMK: (3) 6-9-006:012, S. Kohala District, Island of Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2022-000135), received by this office on November 21, 2022. Staff notes that this application is being pursued to resolve as-built improvements conducted on the subject parcel. The subject 14,000 square foot parcel is designated Urban by the State Land Use Commission and zoned Single-Family Residential (RS -10) by the County. It is also designated Low Density Urban by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.

The parcel is situated entirely within the Special Management Area (SMA); however, the project site is not located within the "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS) as the State of Hawai'i parcel (TMK: (3) 6-9-001:002), is makai (seaward) of the subject parcel. Staff notes that the Planning Director determined that there is ample distance between the shoreline and project area, and as such the requirement to submit a certified shoreline survey is waived. According to Exhibits 4, 4a, and 4b, the minimum 40-foot shoreline setback extends about 9 feet into the north corner of the property. The applicant will be securing an encroachment easement from the DLNR for small portions of the makai wall that encroach on to the State Beach Reserve property. Condition 2 of this determination requires that the applicant complete this encroachment easement process.

Determination of Non-Conforming Seawall:

According to a notarized January 11, 2011, affidavit, Mr. Shiro Takata, individually, as trustee of his revocable trust, and/or as a general partner of Takata Family Limited Partnership, has owned the property since 1965. He stated that *"To the best of my recollection, the seawall at the property was constructed in 1968"*, and that the seawall *"is currently in the same location and is the same height and dimensions as it has been since it was originally constructed"*. Based on the foregoing, the Planning Department confirms that the wall was constructed prior to June 22, 1970, according to Planning Department Rule 11-7(a)(6) relating to the shoreline setback area that was adopted on January 19, 1997. Therefore, we have determined that the wall is of legal non-conforming status.

Proposed Project:

The applicant is requesting a Planning Director determination on the following:

- The as-built improvements are clearly and unquestionably outside the shoreline area and, based on Hawai'i County Planning Commission Rule 9-10(b), and waiving submission of a certified shoreline survey as part of this application.
- The as-built improvements are structural and non-structural improvements to an existing single-family residence and are, therefore, exempt from an SMA permit requirement under PC Rule 9-4(e)(2)(o); and
- The proposed work may proceed without further review under SMA or shoreline setback rules.

According to the information provided by the applicant, the as-built improvements include:

- Enclosing an existing carport/laundry room, and
- Addition of an existing open lanai roof.

Based on the above, there was an addition of approximately 72 square feet of living area to the existing single-family residence, for a total of 2,260 square feet.

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, 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 residence.*
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 as-built improvements to an existing single-family residence 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.

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c/o Cades Schutte LLP
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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. 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.
5. 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.
6. 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@hawaiicounty.gov.

Sincerely,


Zendo Kern (Jan 5, 2023 13:25 HST)

ZENDO KERN
Planning Director

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Enclosure: Exhibit 1 (Site Plan)

cc via email: Roy L. Wickland, Trustee

DATE	ISSUE
10/1/07	100

NO.	REVISIONS	DATE
1	REVISED	
2	REVISED	

PROJECT #	DRAWN BY	CHECKED BY	DRAWING NO
			A1

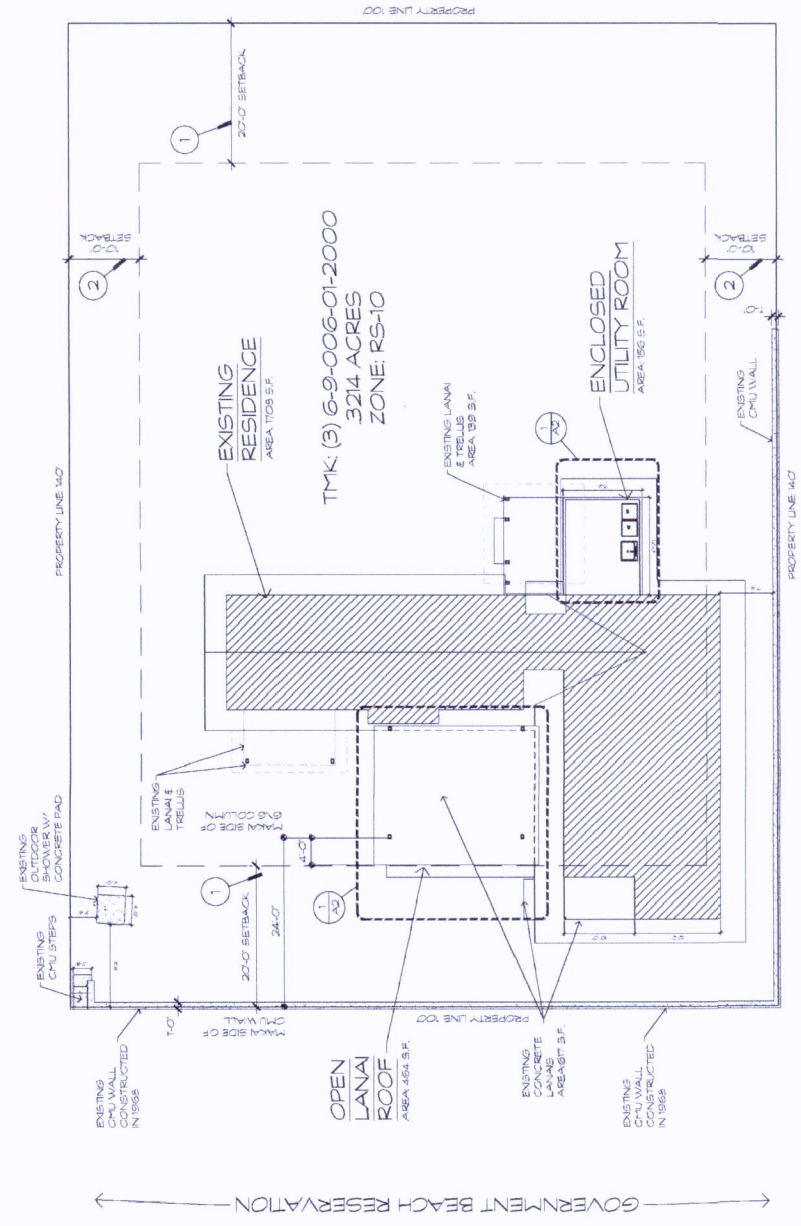
SITE PLAN

KEY NOTES:
SITE PLAN

- 20' FRONT & REAR SETBACKS
- 10' SIDE SETBACKS

NOTES:

- THE FEATURES SHOWN HEREON WERE LOCATED BY AN ACTUAL FIELD SURVEY PERFORMED ON OCTOBER 12 & 19, 2010.
- NO VIOLATIONS OF COUNTY ZONING SETBACK CODES WERE FOUND. BUILDING WAS CONSTRUCTED IN 1958. COUNTY OF HAWAII DID NOT HAVE SETBACK REQUIREMENTS AT THAT TIME.



SITE PLAN
SCALE 1/8"=1'-0"