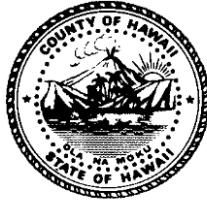


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September 11, 2023

Wayne Morris
75-6126 Alii Drive
Kailua-Kona, HI 96740
VIA EMAIL

Dear Mr. Morris:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2023-000174)**
Applicant(s): Wayne Morris
Landowner(s): Wayne Morris and Alice Morris Living Trust
Project: As-Built Work Within the Shoreline Setback Area
TMK: (3) 7-5-020:020, Alii Drive, South Kona District, Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2023-000174), received by this office on August 7, 2023, on August 31, 2023, staff from the Planning Department visited the site to obtain more information on the as-built work. The 0.47-acre subject parcel is zoned multiple-family residential 1,500 square feet (sf) (RM-1.5) by the County and designated Urban by the State Land Use Commission (LUC). The subject parcel is designated as both "open" (ope) and "medium density urban" (mdu) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The subject parcel is within the County Special Management Area (SMA), as well as within the "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS). According to a letter from the Planning Department dated July 16, 2012, we have determined that the seawall and pool fronting the subject parcel was constructed prior to June 22, 1970, and is therefore considered legally non-conforming.

Staff notes that this Special Management Area Assessment Application (SAA) is being pursued as a resolution to an enforcement complaint received by the applicant on July 11, 2023.

Shoreline Area Determination:

The applicant has provided a description of the activities and development conducted on the parcel located within the shoreline setback area. The parcel is within the Special Management Area (SMA), as well as 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 November 4, 2022 which demarcates the shoreline along the western (makai) property boundaries. Pursuant to Hawai‘i Revised Statutes (HRS) § 205A-43(a) Establishment of Shoreline Setbacks, “Setbacks along shorelines are established of not less than forty feet inland from the shoreline.” All work will be sited outside of the minimum 40-foot shoreline setback area. Staff notes that there is no deeded public access through the subject parcel; however, the applicant will not restrict lateral public access along the shoreline.

Pursuant to Planning Department Rule 11-3(c) a “minor structure” shall not alter the existing grade of the SSA and shall be limited to landscape features (i.e., benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, etc.); walkways for access; and sprinkler systems. Additionally, certain structures can be considered “minor structures” in the SSA if the following applies:

1. *They (the minor structures) are located on a parcel that has a legally hardened shoreline structure (e.g., legally permitted or legally non-conforming seawall).*
2. *The structure does not alter the existing grade of the SSA.*
3. *The structure does not block shoreline access or affect coastal processes, and*
4. *All work in the SSA is done by hand (no large machinery).*

According to the Planning Director, walkways and small concrete pads that adhere to the above listed conditions can be considered a “*minor structure*” and would be exempt from the need for a Shoreline Setback Variance (SSV). Existing structures determined to be a “minor structure” can be repaired and maintained, but not expanded, rebuilt, or replaced without additional review.

Concrete Pool Decking

The seawall, pool, and concrete pool deck are considered legally non-conforming, and the seawall demarcates the location of the “shoreline” for this parcel. The decking has not altered the existing grade of the SSA, nor does it block access in this area. As such, the concrete pool decking is considered a *minor structure* and no shoreline setback variance (SSV) is required.

Concrete-Rubble-Masonry (CRM) wall east of shoreline

The CRM wall is a pre-existing non-conforming wall built prior to the current owners acquiring the property, and also matches the location and size of the previous pool deck that was shown to be in existence since 1990. According to the above conditions, the wall is considered a *minor structure* and no shoreline setback variance is required.

Fill and Concrete Pavers between CRM walls

The area between the CRM wall and the Seawall has been covered with a combination of lava rocks and grass prior to the new ownership. Solid surface pavers were placed to minimize hazards associated with rocks being pushed into the property. The pavers have been constructed to retain the look of the previous hardscaping, with grass planted between the pavers. There is no change in the grade of the shoreline area, and the proposed pavers do not alter shoreline processes or block access in this area. The pavers are considered a *minor structure*, and no shoreline setback variance is required.

Grass lawn mauka of pool deck and pavers in lawn

As part of common landscape maintenance, the yard has been replanted and improved over the years. Pavers have been installed from the steps of the main house to the pool area. There is no significant change to the grade of the shoreline area, and the proposed pavers do not alter shoreline processes or block shoreline access in this area, therefore, the grass lawn and pavers are considered minor structures, and no shoreline setback variance is required.

Special Management Area Determination:

1. Pursuant to Hawai‘i Revised Statutes (HRS) §205A-22, as amended, 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 nonstructural 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 improvements to decking, small walls, and lawn area within the shoreline setback area 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 this 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. 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.

6. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
7. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
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

Sincerely,

Zendo Kern
Zendo Kern (Sep 11, 2023 11:28 HST)

ZENDO KERN
Planning Director

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cc via email: GIS Section