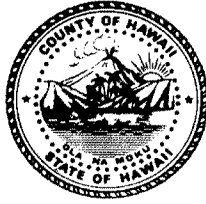


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October 04, 2023

Daryn Arai, LLC
P.O. Box 4501
Hilo, HI 96720
VIA EMAIL: Daryn.Arai@outlook.com

Dear Mr. Arai:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2023-000177)
Special Management Area (SMA) Minor Permit (PL-SMM-2023-000050)**

Applicant(s): Black Sand Beach, LLC

Landowner(s): Black Sand Beach, LLC

Project: Establish Farmers Market, Reconstruct Single-Family Residence, and Reestablishment of Fire Break Roads

Tax Map Key(s): (3) 9-6-002:038 & 9-5-019:015, Punalu'u; Kā'u District; Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2023-00177), received by this office on August 19, 2023, with additional information received on September 25, 2023.

The subject parcels total approximately 143.58 acres of land; however, the project sites will be approximately 0.5 acres of land within Parcel 38, and approximately 1.5 acres of land within Parcel 15. Both parcels are zoned by the County as Open (O), Multiple-Family Residential (RM-2.5), and Village-Commercial (CV-10). The subject parcels and surrounding area are designated as Urban by the State Land Use Commission. The subject parcels are designated as "Resort" (res), "Open" (ope), "Medium Density Urban" (mdu), and "Low Density Urban" (ldu) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. While the entire project area is located within the County's Special Management Area (SMA), in accordance with Hawai'i Revised Statutes (HRS) Ch. 205A-22, the subject parcel is not considered a "shoreline parcel" and therefore, a shoreline certification is not required for this proposed activity.

Existing Land Uses:

Much of what currently exists within this area is formally known as Sea Mountain at Punalu'u which was developed by C. Brewer Properties, Ltd. between the late 1960's to the 1970s, prior to the establishment of SMA law. The development included an 18-hole golf course and associated clubhouse facility, the Colony I condominium, the Kālana I residential subdivision, the Black Sands Restaurant, and the Kā'u Center for History and Culture. Within the project area is a single-family residence (to be rebuilt) that has been on this parcel for over 100 years.

Proposed Project:

PART A:

On Parcel 15 the proposed project is to re-establish the existing firebreak roads that cross the property in two (2) locations, herein noted as the *makai-firebreak* and the *mauka-firebreak*. The mauka firebreak remains partially accessible, with sections requiring grubbing to maintain its function as a firebreak. The mauka-firebreak is more overgrown and will require additional clearing to reopen the road to its historic condition. The mauka-firebreak road is approximately 1,176 feet long and will be graded to be approximately 20-feet wide, while the makai-firebreak will be approximately 2,085 feet long, also approximately 20-feet wide. The majority of the work will be to remove the overgrown vegetation with only minor grubbing needed to regrade the road to historic levels. All grubbed vegetation will be stockpiled on a site located at the northern end of the mauka-firebreak for composting.

Staff notes that the existing firebreak roads have been reviewed regarding archeology and historic structures. While there is an approved breach through an existing ranch wall (Site 4360), no other sites in the area will be impacted or altered.

Pursuant to Planning Commission Rules, this portion of the proposed project would be considered "**Development**" and will require a SMA Minor Permit.

PART B:

On Parcel 38 the proposed project has two (2) objectives with two (2) different regulatory tracks: 1) to allow the landowner the opportunity to reconstruct an existing single-family residence (**Exempt**), and 2) to establish an "Open Market" complex on the subject parcel (**Development**).

The proposed project's "**Exempt**" activities are listed below:

- a) *Reconstruct the existing single-family residence for use by the Open Market staff as a caretaker and security residence. No expansion of the residence will occur, and no changes to the footprint of the structure are proposed.*

The applicant estimates the valuation of the **Exempt** portion of the proposed project (Part B) to be \$60,000.

Purpose of Project:

The objective of the proposed project is to focus on components of the larger development that will immediately benefit the local community, while also providing amenities for visitors as well as providing fire control in this area.

Special Management Area Determination:

Those activities of the proposed project listed as “**Exempt**” above can be considered exempt actions in accordance with SMA Rules and Regulations as they are primarily common or typical repair, maintenance, and demolition activities.

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”:

- *Construction or **reconstruction** of a single-family residence that is less than seven thousand five hundred square feet in floor area and is not part of a larger development.*

Based on the information provided, the Director finds that the proposed reconstruction of an existing single-family residence 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.

However, staff notes that the proposed project includes activities that are considered “**Development**” (establishment of a new Open Market complex, and grading and grubbing of firebreak roads) according to Chapter 205A-22, Hawai‘i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4 (e)(1) relating to Special Management Area (SMA).

In accordance with Chapter 205A-22, Hawai‘i Revised Statutes (HRS), Planning Commission (PC) Rule No. 9-4 (e)(1), and Hawai‘i County Zoning Code, Section 25-4-64 the proposed development of a new Open Market complex and re-establishment of firebreak roads are considered “**development**” and require a review against the Special Management Area rules and regulations. Our review has resulted in the issuance of a SMA Minor Permit for the proposed Open Market complex and firebreak roads because the total valuation of the proposed “**Development**” is \$140,000 which is under \$500,000 and the proposed actions will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA.

Lastly, pursuant to Planning Commission Rule 9-10(e), Special Management Area Minor Permit No. PL-SMM-2023-000050 is hereby issued for the new Open Market complex and firebreak

roads as described above. It is the applicant's responsibility to read and comply with all the conditions listed in the enclosed permit.

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.

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's "**Exempt**" activities:

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, including, but not limited to, Department of Public Works Building Division.
3. Plan approval shall be required prior to the construction or installation of any new structure or development, or any addition to an existing structure or development according to Section 25-2-71(a) of the Zoning Code.
4. Other than the proposed project as described in this determination letter or the attached SMA Minor Permit, no further work is permitted under this approval.
5. The Applicant shall secure building permits for the proposed project within two (2) years from the date of the determination or permit. If Building Permits have not been secured within that two (2) year period, the determination or permit is automatically null and void, and a new Special Management Area Assessment Application must be submitted for review and approval.
6. 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.
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. 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.
9. The Planning Director shall initiate procedures to revoke this determination should any of the conditions not be met or substantially complied with in a timely fashion.

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

Zendo Kern (Oct 4, 2023 13:31 HST)

ZENDO KERN
Planning Director

AJR:lms

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Enclosure: SMM Permit No. PL-SMM-2023-000050

Cc (via e-mail): Shichao Li, State-OPSD
Lisa E. Webster, State-OPSD
normanquon@hawaii.rr.com