

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

November 06, 2023

Brian Clark
P.O. Box 27
Pāpa'ikou, HI 96781

Dear Mr. Clark:

**SUBJECT: Special Management Area Use Permit Assessment Application
(PL-SAA-2023-000193)
Special Management Area Minor Permit
(PL-SMM-2023-000054)**

Applicant: Brian Clark

Landowner: Brian Clark Living Trust

Request: Subdivide Property into Four (4) Parcels

TMK: (3) 2-7-004:118, South Hilo District, Island of Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2023-000193) received by this office on October 6, 2023. The applicant is requesting approval for a four (4) lot subdivision of the subject TMK. Staff notes the subject parcel was created through subdivision No. 6848 in 1997.

The 16.93-acre subject parcel is zoned both Agriculture 3-acres (A-3a) and Agriculture twenty (20) acres (A-20a) by the County and designated as both Agriculture and Conservation by the State Land Use Commission (LUC). The subject parcel is designated as "Open" (ope), Low Density Urban (ldu) and Industrial (ind) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The subject parcel is located within the Special Management Area (SMA), and it is considered a "shoreline parcel" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS). Since the proposed project is a subdivision of land with no associated construction activities, the Director has waived the requirement for a shoreline certification.

Staff notes that the portion of the parcel that lies within the State Land Use Conservation District will not be subdivided, but will be included into the boundary of the new Lot 1.

Special Management Area Determination:

Staff notes that the subdivision that created the subject parcel in 1997 was not considered “development” in accordance with Planning Commission Rule 9-4(e)(2)(M), which states: *Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.* Since the subject parcel to be subdivided was created via this exemption, the current proposed subdivision is therefore considered to be “development”.

According to Hawai‘i Revised Statutes (HRS) Chapter 205A-44 and Planning Commission (PC) Rule No. 9-4(e)(1)(E) relating to Special Management Area (SMA), “*Change in the density and intensity of use of land, including but not limited to the division or subdivision of land*” is defined as “development.” Based on the above, the proposed four (4) lot subdivision is considered “development” and requires a review against the Special Management Area rules and regulations. Our review has resulted in the issuance of a SMA Minor Permit because the total valuation of the proposed project is under \$500,000 and will not have a cumulative impact or significant adverse environmental or ecological effect on the SMA.

Therefore, pursuant to Chapter 205A-22, Hawai‘i Revised Statutes (HRS), Special Management Area Minor Permit No. PL-SMM-2023-000054 is hereby issued for the project as described above. It is the applicant’s responsibility to read and comply with the conditions listed in the enclosed permit.

If you have questions regarding this document, 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 \(Nov 6, 2023 08:21 HST\)](#)

ZENDO KERN
Planning Director

AJR:lms

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Enclosure: SMA Minor Permit No. PL-SMM-2023-000054
Exhibit 1 – Site Plan

cc via email w/enclosures: Shichao Li, State-OPSD
Lisa E. Webster, State-OPSD
GIS Section
Administrative Permits Division

Mitchell D. Roth
Mayor

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Managing Director

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Special Management Area Minor Permit No. PL-SMM-2023-000054

Project: Subdivide Property into Four (4) Parcels
Applicant(s): Brian Clark
Landowner(s): Brian Clark Living Trust
TMK(s): (3) 2-7-004:118
Location: Pāpa'ikou, South Hilo District, Island of Hawai'i
Land Area: 16.93-acres

Applicant's Request

- 1. Project Description:** The applicant is proposing to subdivide subject parcel to create a 4-lot subdivision and no associated construction activities. No other work or development is proposed at this time.
- 2. Purpose of Project:** The purpose of the proposed project is to subdivide the subject parcel into four (4) separate lots of record.
- 3. Project Valuation:** \$60,000.
- 4. Determination:** Staff notes that the subdivision that created the subject parcel in 1997 was not considered "development" in accordance with Planning Commission Rule 9-4(e)(2)(M), which states: *Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.* Since the subject parcel to be subdivided was created via this exemption, the current proposed subdivision is therefore considered to be "development". Additionally, according to Hawai'i Revised Statutes (HRS) Chapter 205A-44 and Planning Commission (PC) Rule No 9-4(e)(1)(E), "*Change in the density or intensity of use of land, including but not limited to the division or subdivision of land*" is defined as "development." Therefore, the proposed subdivision of the subject parcel into four (4) lots is considered "development" and requires a review against the Special Management Area rules and regulations. Our review has resulted in the issuance of a SMA Minor Permit because the total valuation of the proposed project is under \$500,000 and will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA.

State and County Plans

5. **State Land Use District:** The subject parcel is within the State Land Use Agriculture and Conservation District.
6. **General Plan:** The subject parcel is designated as Open, Low Density Urban, and Industrial by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
7. **County Zoning:** The parcel is currently zoned as both Agriculture 3-acres (A-3a) and Agriculture 20-acres (A-20a).
8. **Special Management Area:** The project parcel is located within the Special Management Area (SMA) and it is considered a "shoreline parcel" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).
9. **Flood Zone:** FEMA designates the subject parcel as being within Flood Zone "X".

Compliance with Objectives and Policies of Chapter 205A, Hawai'i Revised Statutes (HRS), Regarding the Special Management Area

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- ☒ Development will not have any significant adverse environmental or ecological effect, except as any adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. These adverse effects shall include but not be limited to the potential cumulative impact of individual developments, each of which taken by itself might not have a significant adverse effect and the elimination of planning options.
- ☒ The proposed development is consistent with the Hawai'i County General Plan, community plan, and zoning; provided that a finding of consistency shall not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.
- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, HRS (as amended), to:
 - ☒ Provide coastal recreational opportunities accessible to the public.

- ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
- ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
- ☒ Protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes, from disruption and minimize adverse impacts on all coastal ecosystems.
- ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.
- ☒ Reduce hazard to life and property from coastal hazards.
- ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- ☒ Stimulate public awareness, education, and participation in coastal management.
- ☒ Protect beaches and coastal dunes for: Public use and recreation; The benefit of coastal ecosystems; Use as natural buffers against coastal hazards; and coordinate and fund beach management and protection.
- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development

- ☒ Public Participation
- ☒ Beach and Coastal Dune Protection
- ☒ Marine and Coastal Resources
- ☒ The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

1. As discussed above, the proposed four (4) lot subdivision will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.
2. The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.
3. The estimated project cost of \$60,000 is not in excess of \$500,000.

Approved Uses, Activities and Operations

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. PL-SMM-2023-000054** is hereby approved for the proposed subdivision of the subject parcel into four (4) new lots (Lot 1, 2, 3 and 4)), subject to the applicants' compliance with the conditions of approval as specified below.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. PL-SMM-2023-000046**, subject to the following 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. The Applicant shall comply with all conditions and recommendations outlined in County Zoning Code relating to Subdivisions and shall apply for any variances required for the proposed subdivision, including, but not limited to, water and access.

4. The Applicant shall ensure that the shoreline trail remains in its current use and location.
5. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, up-lights or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward, the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b), Hawai'i Revised Statutes.
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. That in issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit. If, subsequent to issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings.
8. The Planning Director shall initiate procedures to revoke this permit should any of the conditions not be met or substantially complied with in a timely fashion.

If you have any questions, please feel free to contact Alex Roy at (808) 961-8140 or via email at Alex.Roy@hawaiiicounty.gov.

APPROVED:

Zendo Kern
Zendo Kern (Nov 6, 2023 08:21 HST)
ZENDO KERN
Planning Director

11/06/23

Date

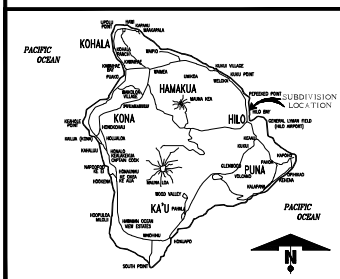
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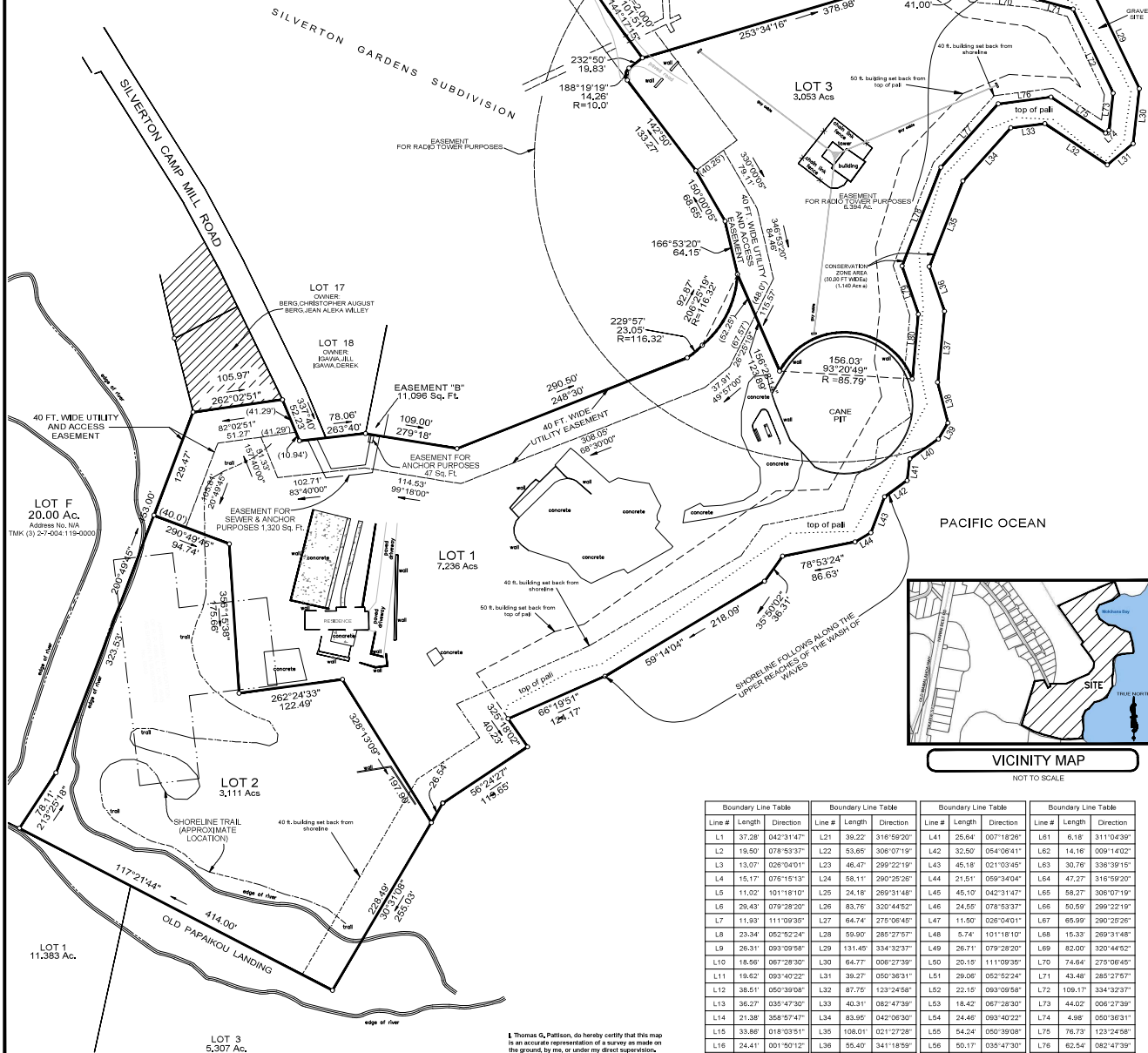
OF ROYAL PATENT 4968, L.C. AWARD 4645 TO PAAOAO & ROYAL PATENT 7875, L.C. AWARD 11215, APANA 1 TO ARONA KEALIHONUI

RESUBDIVIDING IT INTO LOTS 1, 2, 3 & 4

AT PAPA'KOU, SOUTH HILO, COUNTY OF HAWAII, STATE OF HAWAII



ISLAND MAP



VICINITY MAP

NOT TO SCALE

Boundary Line Table			Boundary Line Table			Boundary Line Table			Boundary Line Table		
Line #	Length	Direction	Line #	Length	Direction	Line #	Length	Direction	Line #	Length	Direction
L1	37.28	042°31'47"	L21	39.22	318°59'20"	L41	25.64	007°18'26"	L61	6.18	311°04'39"
L2	19.50	078°53'37"	L22	53.65	308°07'19"	L42	32.50	054°06'41"	L62	14.16	009°14'02"
L3	13.07	028°04'01"	L23	46.47	299°22'19"	L43	45.18	021°03'49"	L63	30.76	338°39'15"
L4	15.17	076°15'13"	L24	58.11	290°25'26"	L44	21.51	059°34'04"	L64	47.27	316°59'20"
L5	11.02	101°18'10"	L25	24.18	269°31'48"	L45	45.10	042°31'47"	L65	58.27	308°07'19"
L6	29.43	079°28'20"	L26	83.76	320°44'52"	L46	24.55	078°53'37"	L66	50.59	299°22'19"
L7	11.93	111°09'35"	L27	64.74	275°06'45"	L47	11.50	028°04'01"	L67	65.99	290°22'19"
L8	23.34	052°52'24"	L28	59.90	285°27'57"	L48	5.74	101°18'10"	L68	15.33	269°31'48"
L9	26.31	093°09'58"	L29	131.45	334°32'37"	L49	26.71	079°28'20"	L69	82.00	320°44'52"
L10	18.56	087°28'30"	L30	64.77	008°27'39"	L50	20.15	111°09'35"	L70	74.64	275°06'45"
L11	19.62	093°40'22"	L31	39.27	050°36'31"	L51	29.06	052°52'24"	L71	43.48	285°27'57"
L12	38.51	050°39'08"	L32	87.75	123°24'58"	L52	22.15	093°09'58"	L72	109.17	334°32'37"
L13	36.27	035°47'30"	L33	40.31	082°47'39"	L53	18.42	067°28'30"	L73	44.02	008°27'39"
L14	21.38	358°57'47"	L34	83.95	042°06'30"	L54	24.46	099°40'22"	L74	4.98	050°36'31"
L15	33.86	018°03'51"	L35	108.01	021°27'28"	L55	54.24	050°39'08"	L75	76.73	123°24'58"
L16	24.41	001°50'12"	L36	55.40	341°18'59"	L56	50.17	035°47'30"	L76	62.54	082°47'39"
L17	26.30	336°56'02"	L37	83.84	005°27'38"	L57	26.32	358°57'47"	L77	100.53	042°06'30"
L18	15.98	311°04'39"	L38	48.27	345°43'48"	L58	33.09	018°03'51"	L78	124.44	021°27'28"
L19	22.08	009°14'02"	L39	21.84	030°51'56"	L59	35.31	001°50'12"	L79	59.95	341°18'59"
L20	16.80	336°39'15"	L40	40.84	055°06'15"	L60	39.61	336°56'02"	L80	76.21	005°27'38"

I, Thomas G. Pattison, do hereby certify that this map is an accurate representation of a survey as made on the ground, by me, or under my direct supervision.



NOTES:
AZIMUTHS AND DISTANCES ARE BASED ON RECORD INFORMATION AND REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "ALALA".
NAMES OF OWNER(S) OF ADJOINING PARCELS WERE TAKEN FROM COUNTY TAX RECORDS.
ALL BOUNDARY CORNERS ARE MARKED WITH A "P" UNLESS OTHERWISE NOTED.
TOP OF PAI WAS CREATED USING LIDAR DATA COLLECTED ON (DATE) _____

FLOOD PLAIN NOTE:
ACCORDING TO THE F.I.R.M. # 15566 0700 F, DATED 09-29-2007 THIS PROPERTY DOES LIE IN "ZONE X"

PREPARED BY: VCV

PATTISON LAND SURVEYING

P.O. Box 384569-Waikoloa Hawaii-96738
Office 808.327.9439

AFFECTING TNC CD: 2-7-04018