

Mitchell D. Roth
Mayor

Deanna S. Sako
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

May 06, 2024

Val Colter
13-6460 Kalapana Kapoho Rd.
Pahoa, HI 96778
VIA EMAIL

Dear Ms. Colter:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2024-000218)**

Applicant: Juston Ted Hertz & Rebecca Chacko

Landowner: Juston Ted Hertz & Rebecca Chacko

Project: New Garage and BBQ Area

TMK: (3) 3-2-003:040, North Hilo District, Island of Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2024-000218), submitted to this office on March 21, 2024.

The 1.939-acre subject parcel is zoned Agricultural 20-acres (A-20a) by the County and designated Agricultural by the State Land Use Commission (LUC). The subject parcel is designated as primarily Important Agricultural Lands (ial) with a small portion of Open (ope) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The project parcel is located within the Special Management Area (SMA); however, it is not located within the "shoreline area" as defined by section 205A-41, Hawai'i Revised Statutes (HRS); therefore, no shoreline certification is required.

Proposed Project:

The current proposed project is to construct a new 736 square foot accessory area that includes a covered garage and BBQ area. The structure will be one (1) story wood framed building approximately 12-feet in height. Project will be located approximately 200-feet from the shoreline; therefore, no shoreline or coastal impacts are anticipated. The applicant intends to utilize the accessory building for personal use and will not be used as a dwelling or vacation rental. There is an existing, permitted single family residence located on the parcel, and no work is proposed on this structure. No additional development or construction is proposed.

Special Management Area Determination:

1. 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:
 - *Grading, removal, dredging, mining, or extraction of any materials.*
 - *Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste.*
 - *Construction, reconstruction, demolition, or alteration of the size of any structure.*
2. Pursuant to Planning Commission Rule 9-4(e)(3), "any proposed use, activity, or operation listed in Section 9-4(e)(2) 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."
 - *Structural and non-structural 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 construction of a new accessory building that includes a garage and BBQ area 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, please note that any substantive changes to the improvements listed in the current application may require further review by this office and possibly the submittal of another SMA Use Permit Assessment Application.

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. 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, the determination is automatically null and void, and a new Special Management Area Assessment Application must be submitted for review and approval.
4. The Applicant shall not use the new accessory building (garage and BBQ area) for dwelling or rental purposes.
5. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
6. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
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. Any substantive changes or further development, including but not limited to, the design and size of the 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 issuance of this determination, such information and data prove to be false, incomplete,

Val Colter
May 06, 2024
Page 4

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. 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 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@hawaiiicounty.gov.

Sincerely,


Zendo Kern (May 6, 2024 08:04 HST)

ZENDO KERN
Planning Director

AJR:mads
\\coh01\planning\public\wpwin60\czm\smaa\2024\pl-saa-2024-000218_garage_bbq.doc

cc via email: Justin Hertz
GIS Section