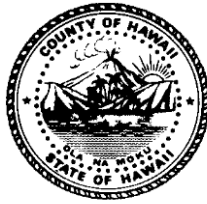


Mitchell D. Roth
Mayor

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

August 14, 2023

Hank Correa
630 Kīlauea Ave., Ste. 101
Hilo, HI 96720

Dear Mr. Correa:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(SAA-19-001724)
Special Management Area (SMA) Minor Use Permit
(PL-SMM-2022-000016)
Notice of Violation and Order
(ZCV-2018-091E)
Applicant(s): Henry J. Correa Jr. Trust, & Kristilee Correa Trust
Landowner(s): Henry J. Correa Jr. Trust, & Kristilee Correa Trust
Project: After-the-Fact Construction and Demolition
Tax Map Key: (3) 2-8-008:100; South Hilo District, Island of Hawai'i**

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (SAA-19-001724), originally submitted to this office on October 25, 2019. Additional information was submitted to this office on January 7, 2021, October 2021 & February 2022, as well as site visits by staff in 2019, 2021 and 2022. Currently, the Applicant is working to finalize a resolution to donate a public shoreline access easement (Easements 7-A and 7-B) which is to be approved by the Hawai'i County Council. This SMA permit is part of the resolution to the Notice of Violation and Order (ZCV-2018-091E) for the unauthorized construction of a storage structure, gates, and fencing. We understand that as part of the resolution to donate this easement to the County, removal of fencing and gates will occur. We also note that the storage structure and some fencing has already been removed as was requested by the County.

The applicant's 38.25-acre parcel is zoned as both Agricultural 20-acres (A-20a) and General-Industrial 5-acres (MG-5a) by the County and designated as Urban, Conservation and Agricultural by the State Land Use Commission (LUC). The subject parcel is designated as "Open" (o), Important Agricultural Lands (ial) and Industrial (ind) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map.

Activities Conducted:

This Special Management Area (SMA) Minor Use Permit is being pursued to obtain After-the-Fact (ATF) approval for the following activities, and approval for future proposed activities.:

- Minor grubbing (post holes for fencing and gates).
- Construction of a storage structure, and subsequent demolition of the storage structure.
- Construction of gates and metal fencing, and subsequent demolition of gates and metal fencing.
- Conduct a land survey of the shoreline access easement.
- Trash and debris removal
- Other activities as required by Resolution approved by the Hawai'i County Council.

No additional land disturbance or construction is proposed other than what was previously conducted.

Shoreline Area Determination:

Approximately half of the project area is located within the Special Management Area (SMA) as well as located within the "shoreline area" as defined by section 205A-41, Hawai'i Revised Statutes (HRS). Due to the location of the activities being approximately 150-feet from the shoreline that is located at the top of Pali, and that no work was conducted makai (seaward) of, or near the minimum 40-ft shoreline setback boundary, the Planning Department will waive the requirement for a shoreline certification. Based on the preceding, the Planning Department considers this project will have no cumulative impact, or any substantial adverse environmental or ecological effect on the SMA.

Special Management Area Determination:

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 definition of "Development" can be applied to the proposed use:

- *Grading, removing, dredging, mining, or extraction of any materials.*
- *Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste, and*
- *Construction, reconstruction, or alteration of the size of any structure.*

We find that the activities as described above are not exempt from the definition of "development"; however, the project will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA. Therefore, pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No. PL-SMM-2022-000016, is

hereby issued. It is the applicant's responsibility to read and comply with all conditions listed in the enclosed permit.

While further review of the proposed project against the Special Management Area rules and regulations will not be required, all other applicable Zoning Code and Building Code requirements must be satisfied. Additionally, any future development or activities not included in this approval shall require further review and approval as provided under Chapter 205A, HRS and Rule 9, Planning Commission Rules of Practice and Procedure.

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,

April Surprenant

APRIL SURPRENANT
Long Range Program Manager

AJR:jaa

\\coh01\planning\public\wpwin60\czm\smm\2022\pl-smm-2022-000016_1_gaults_gulch_correa_2023.doc

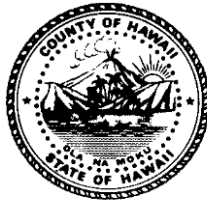
Enclosure: PL-SMM-2022-000016

Cc (via email): Director, Office of Planning, DBEDT
Shichao Li, Office of Planning
Planning Dept. Long Range Division
Planning Dept. GIS Section
Mark Iwamoto, Planning Inspector

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

Special Management Area Minor Permit No. PL-SMM-2022-000016

Project: Resolution to Notice of Violation and Order (ZCV-2018-091E)
Applicant(s): Gault's Gulch LLC
Landowner(s): Gault's Gulch LLC; Henry J. Correa Jr., & Kristilee Correa
TMK(s): (3) 2-8-008:100
Location: Pepe'ekeo Point Subdivision, South Hilo District, Island of Hawai'i
Land Area: 38.25 acres

Applicant's Request

- 1. Project Description:** This Special Management Area (SMA) Minor Use Permit is being pursued to obtain After-the-Fact (ATF) approval for the following activities:
 - Construction of a storage structure, and subsequent demolition of the storage structure.
 - Construction of gates and metal fencing, and subsequent demolition of gates and metal fencing.
 - Land surveys, trash and debris removal.
- 2. Purpose of Project:** The applicant has submitted this application as a resolution to Notice of Violation and Order No. ZCV-2018-091E.
- 3. Project Valuation:** \$50,000.
- 4. Determination:** According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4 relating to Special Management Area (SMA): "Grading, removing, dredging, mining, or extraction of any materials." is defined as "development." Therefore, the activities as described above, are considered "development", and require a SMA Minor Permit.

State and County Plans

5. **State Land Use District:** The subject parcel is designated as within Urban, Conservation and Agricultural District by the State Land Use Commission. The project area is entirely within the Urban District.
6. **General Plan:** The parcel is designated as Open (ope), Important Agricultural Lands (ial) and Industrial (ind) by the Hawai‘i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
7. **County Zoning:** The parcel is currently zoned as both Agricultural 20-acres (A-20a) and General-Industrial 5-acres (MG-5a).
8. **Special Management Area:** The subject parcel is located in the SMA as well as within the “shoreline area” as defined by Section 205A-41 (as amended), Hawai‘i Revised Statutes (HRS).
9. **Flood Zone:** 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. Those adverse effect 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 conducted activities 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 \$50,000 for the activities as described above 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-2022-000016** is hereby approved to:

1. Approve of After-the-Fact (ATF) grubbing, construction/demolition of storage structure, and demolition of gates and fencing.
2. Conduct a land survey of the shoreline access, fencing, parking, and coastal trail.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. PL-SMM-2022-000016**, 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 will ensure that all required approvals from the County of Hawai'i Department of Public Works are granted for all previous and proposed ground disturbing and construction activities.
4. The Applicant shall continue to work with the County of Hawai'i and finalize the "*Resolution Accepting the Donation of the Fee Simple Title to Easement 7-A and Easement 7-B at the Former Pepe'ekeo Mill Site from the Landowner the Henry J. Correa, Jr. Trust, and the Kristilee Correa Trust*" (Resolution) within two (2) years of this permit.
5. The Applicant shall remove any impediments along Easement 7-A and 7-B within two (2) years of this permit, or as required to conform with conditions or requirements of the Resolution approved by the Hawai'i County Council.
6. The Applicant shall, at no cost to the County, update the *Second Amendment and Restated Declaration of Vehicular and Parking Public Access Easement* (Doc. No. 2011-095621) and *Grant of Public Access Easements* (Doc No. 2011-136099) as required to conform with the Resolution approved by the Hawai'i County Council.
7. The Applicant shall ensure that all remaining fencing that demarcates Easement 7-A and Easement 7-B from the adjacent property (Tax Map Key: (3) 2-8-008:104) is entirely contained and will not cross property boundaries without written expressed approval provided by the adjacent landowner.
8. The applicant shall ensure that the Public Shoreline Access Easement P-15-A remains open and accessible for pedestrian access.
9. Neither the landowner, nor any agent of the landowner, or its successors shall, at any time, impede or otherwise restrict lateral public access along the shoreline and within the public pedestrian access easement that runs along the makai portion of the subject parcel.
10. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
11. 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.

12. An extension of time for the performance of the conditions contained herein may be granted by the Planning Director upon the following circumstances:
 - a) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns, and that are not the result of their fault or negligence.
 - b) Granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
 - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
13. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

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

APPROVED:

April Surprenant

APRIL SURPRENANT
Long Range Program Manager

August 14, 2023

Date