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County of Hawai'i

PLANNING DEPARTMENT

Zendo Kern
Director

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Deputy Director

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August 26, 2022

Derek Simon
c/o Carlsmith Ball, LLP
1001 Bishop St., Ste. 2100
Honolulu, HI 96813

Dear Mr. Simon:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2022-000062)
Special Management Area Minor Permit (SMM)
(PL-SMM-2022-000028)
Applicant(s): Kevin M. & Monica S. Barry
Landowner(s): Kevin M. & Monica S. Barry
Project: Single-Family Dwelling and Related Improvements
TMK: (3) 1-5-059:059, Puna District, Island of Hawai'i**

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2022-000062), received by this office on March 8, 2022, with additional information received on June 15, 2022, and August 5, 2022. The 0.51-acre subject parcel is zoned Agricultural 1-acre (A-1a) by the County and designated Agricultural by the State Land Use Commission (LUC). The subject parcel is designated as Open (ope) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map.

The entire 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 proposed single-family dwelling and related improvements being at least 100-feet from the approximate shoreline, the Director has waived the requirement for a Shoreline Certification for this proposed activity. Staff notes there is no deeded public access through the subject parcel; however, the applicant will not restrict lateral public access along the shoreline.

Derek Simon
c/o Carlsmith Ball, LLP
August 26, 2022
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Special Management Area Determination:

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), "*grading, removing, dredging, mining, or extraction of any materials*" and, "*construction, reconstruction, demolition or alteration of the size of any structure*" is defined as "development." Additionally, in conformance with HRS Ch. 205A-22, the proposed construction of a single-family residence and related improvements that are situated on a shoreline parcel 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 \$485,232 which is under \$500,000 and 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-2022-000028 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 any questions, please contact Alex J. Roy of this office at (808) 961-8140.

Sincerely,

Zendo Kern

Zendo Kern (Aug 26, 2022 10:02 HST)

ZENDO KERN
Planning Director

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Enclosures: SMA Minor Permit No. PL-SMM-2022-000028
Exhibit 1 – Site Plan

Cc (via e-mail): Shichao Li, State-OPSD
Lisa E. Webster, State-OPSD
GIS Section

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Special Management Area Minor Permit No. PL-SMM-2022-000028

Project: Single-Family Residence and Related Improvements
Applicant: Kevin M. & Monica S. Barry
Location: Paradise Ala Kai Drive, Puna District, Island of Hawai'i
TMK: (3) 1-5-059:059
Land Area: 0.51 acres

Applicant's Request

1. Project Description:

The applicant is proposing to:

- Construct a 2,351 square-foot dwelling that consists of three (3) bedrooms, two (2) bathrooms, kitchen, great room, a 133 square-foot porch, and 630 square-foot covered lānai.
- Construct a 615 sq. ft. detached garage.
- Construct a 6-foot-high rock wall along portions of the property boundary.
- Additional improvements include a private water catchment system, solar photovoltaic system, individual wastewater system, driveway and entrance gate, as well as general residential landscaping.
- The applicant is also requesting to conduct beekeeping activities by developing an apiary along the southern property boundary, which was a representation made to the State Land Use Commission when reclassifying the property to the Agricultural District.

Currently there is no existing development or structures located on the subject parcel, and no other uses or activities, other than what is described above, are proposed.

2. Purpose of Project: To construct a single-family residence on the parcel.

3. Project Valuation: \$485,232.

4. Determination: According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4 (e)(1)(B) and (E) relating to Special Management

Area (SMA): “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” is defined as “development.” Additionally, in conformance with Hawai‘i Revised Statutes (HRS) Ch. 205A, the proposed construction of a single-family residence and related improvements that are situated on a shoreline parcel 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.

State and County Plans

1. **State Land Use District:** The parcel is designated Agriculture by the State Land Use Commission.
2. **General Plan:** The parcel is designated as “open” (ope) by the Hawai‘i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The parcel is currently zoned Agriculture 1-acre (A-1a).
4. **Special Management Area:** The subject parcel is located in the SMA as well as located within the “shoreline area” as defined by Section 205A-41, Hawai‘i Revised Statutes (HRS).
5. **Flood Zone:** X & VE

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 such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include but not be limited to the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.
- ☒ The proposed development is consistent with the Hawai‘i County General Plan and the Zoning Code.
- ☒ The proposed development does not conflict with the following objective(s) of Chapter 205A, HRS, 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: 1) public use and recreation; 2) the benefit of coastal ecosystems; 3) use as a natural buffer against coastal hazards; and 4) 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 development 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 \$485,232 does not exceed \$500,000.

Approved Uses, Activities and Operations

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. PL-SMM-2022-000028** is hereby approved for the construction of a single-family residence and related improvements on the above referenced property.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. PL-SMM-2022-000028**, **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.
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. A Building Permit for the proposed single-family dwelling and related improvements shall be issued within two (2) years from the date of this permit.
4. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
5. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.

6. The method of sewage disposal shall meet with the requirements of the Department of Health.
7. The Applicant shall not, at any time, impede or otherwise restrict lateral public access along the shoreline fronting the subject parcel.
8. A construction barrier, meeting with the approval of the Planning Director, shall be erected along dashed red line as shown on Exhibit 1 prior to the commencement of land altering and construction activities and shall remain in place until final inspection has been granted by the Building Division for the new single-family dwelling.
9. No walls, land alteration, grubbing, landscaping or construction activities, including but not limited to, the stockpiling of debris, construction materials or equipment, shall occur seaward (makai) of the dashed red line as shown on Exhibit 1 without securing a prior written determination of minor structure or activity pursuant to Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.
10. The Applicant has submitted a written estimate for all construction activities to confirm that the total project valuation of \$485,232 is not in excess of \$500,000. In the event the total valuation of the proposed project as defined in this permit does exceed \$500,000, this Special Management Area Minor Permit shall be deemed null and void and the applicant shall be required to secure approval of a Special Management Area (Major) Use Permit from the Planning Commission.
11. 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.
12. 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.
13. Any further development, including but not limited to, the construction of structures or improvements not included in this permit shall require further review and approval as

provided under Chapter 205A, HRS, and Rule 9, Planning Commission Rules of Practice and Procedure.

14. 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 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.
15. 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 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).
16. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may revoke the permit or require additional review against the Special Management Area rules and regulations.

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@hawaiicounty.gov.

APPROVED:

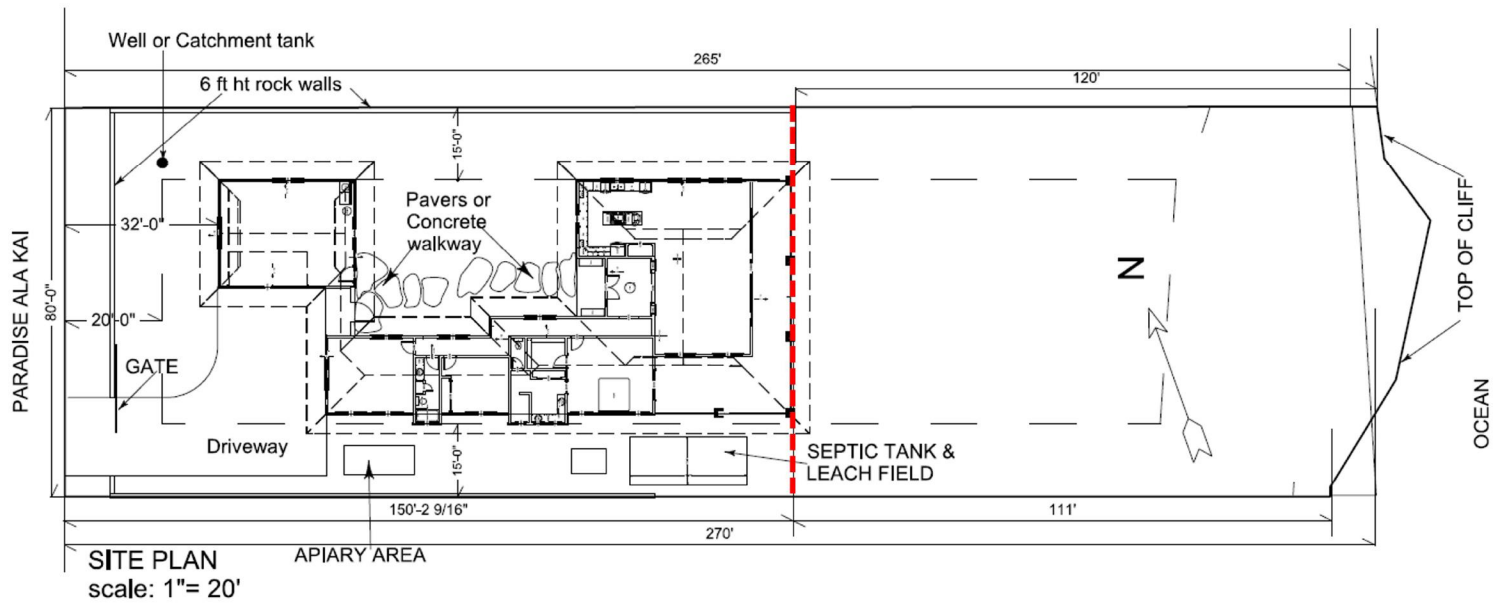
Zendo Kern

Zendo Kern (Aug 26, 2022 10:02 HST)

ZENDO KERN
Planning Director

August 26, 2022

Date



KEVIN & MONICA BARRY
(3) 1-5-059:059, Paradise Ala Kai., HPP, Kea'au, Hawai'i County.

Exhibit 1
PL-SMM-2022-000028