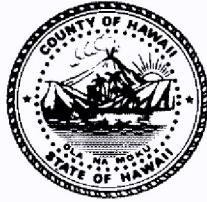


Mitchell D. Roth
Mayor

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

October 26, 2022

Ashley Michaud
14-3431 Seadrift Road #2406
Pahoa, HI 96778
Email: iphoneash@hotmail.com

Dear Ms. Michaud:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2022-000095)
Special Management Area (SMA) Minor Use Permit
(PL-SMM-2022-000030)
Applicant(s): Ashley Michaud
Landowner(s): Ashley Michaud and Kanako Kitao Spendlove
Project: Vegetation and Land Management
Tax Map Key: (3) 1-3-004:006, Opihikao Beach, Puna District, Hawai'i**

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2022-000095), submitted to this office on August 9, 2022. Additional information was received on August 24, 2022.

The subject 41,988-square foot parcel is zoned Open (O) by the County and designated Conservation 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 project parcel is located within the Special Management Area (SMA) and is located within the "shoreline area" as defined by section 205A-41, Hawai'i Revised Statutes (HRS).

Staff notes that the proposed project is located entirely within the State Land Use (SLU) Conservation District and is therefore under the regulatory authority of the Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL). According to letters dated June 24, 2022, and September 20, 2022, the landowner has been provided authorization by the OCCL for the proposed project.

Proposed Project:

According to the information provided, the applicant is proposing to conduct the following activities:

1. Remove two (2) trees from the subject parcel that are diseased and damaged.
2. Remove six (6) invasive trees.
3. Remove invasive species and to conduct basic land management, including routine weed control, clearing of understory and tree pruning.
4. Planting of native and endemic plants.
5. No other land uses are proposed.

The objective of the proposed project is to promote sight lines along Red Road, remove invasive species and encourage the growth of native and endemic plants.

Determination of Minor Activity within Shoreline Setback Area:

Pursuant to HRS 205A-45 and Planning Department (PD) Rule 11-5(a) “*All lots which abut the shoreline shall have a minimum shoreline setback line of forty feet.*” Please note that the shoreline setback for any future development on the subject parcel will be subject to a valid shoreline certification and will be determined during the SMA assessment of that project.

Per Planning Department Rules of Practice and Procedure, Rule 11-7 “[a] minor structure or activity approved in accordance with section 11-8” may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department. Planning Department (PD) Rule 11-3(f) states that “Minor activity” means an activity that does not alter the existing grade of the shoreline setback area and may include activities such as landscaping and minor clearing (grubbing) of vegetation. Further, according to PD Rule 11-8, “*A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.*”

The only portion of the proposed project to extend into the County of Hawai‘i shoreline setback area will be the removal of invasive species and basic land management such as routine weed control, clearing of understory and tree pruning via hand-pulling. However, the work will not affect beach processes, artificially fix the shoreline, or interfere with public access or public views to and along the shoreline. Therefore, the improvements are considered minor and pursuant to PD Rule 11-8 and will not require a Shoreline Setback Variance. Additionally, the

Planning Director has waived the requirement for a shoreline certification as the majority of the proposed development will be sited well inland from the shoreline.

Special Management Area Determination:

Pursuant to Hawai'i Revised Statutes (HRS) §205A-22, as amended, and Planning Commission Rule 9-4(e)(1)(B) relating to the Special Management Area, "Development" includes: "*Grading, removing, dredging, mining, or extraction of any materials*"

We find that the proposed project is 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-2022-00030, 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.

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 Tracie-Lee Camero of this office at (808) 961-8166 or via email at tracie-lee.camero@hawaiiicounty.gov.

Sincerely,

Zendo Kern
Zendo Kern (Oct 26, 2022 12:50 HST)

ZENDO KERN
Planning Director

TC:mads
P:\wpwin60\czm\smm\2022\pl-smm-2022-000030_1_michaud.doc

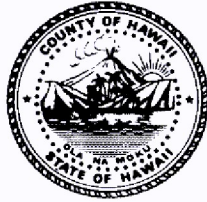
Enclosures: PL-SMM-2022-000030
Exhibit 1 – Site Plan

cc via email: Director, Office of Planning, DBEDT
Shichao Li; State-OPSD
Lisa E. Webster, State-OPSD

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-2022-000030

Project: Vegetation Removal, Replanting and Land Management
Applicant(s): Ashley Michaud
Landowner(s): Ashley Michaud and Kanako Kitao Spendlove
TMK(s): (3) 1-3-004:006
Location: Opihikao Beach, Puna, Island of Hawai'i
Land Area: 41,988 Square Feet

Applicant's Request

1. Project Description: This Special Management Area (SMA) Minor Use Permit is being pursued for the following activities:

1. Remove two (2) trees from the subject parcel that are diseased and damaged.
2. Remove six (6) invasive trees.
3. Remove invasive species and to conduct basic land management, including routine weed control, clearing of understory and tree pruning.
4. Planting of native and endemic plants.
5. No other land uses are proposed.

A portion of the proposed project will occur within the shoreline setback area which will include the removal of invasive species and basic land management such as routine weed control, clearing of understory and tree pruning via hand-pulling as shown on the Exhibit 1.

2. Purpose of Project: The objective of the project is for basic land management to remove invasive species and support native growth on the subject property.

3. Project Valuation: \$1,000.00

4. Determination: According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4(1)(B) relating to Special Management Area (SMA), "development" includes: "Grading, removing, dredging, mining, or extraction of any materials"; as such the proposed project will require a SMA Minor permit.

State and County Plans

5. **State Land Use District:** The subject parcel is within the State Land Use Conservation District.
6. **General Plan:** The parcel is designated as Open (ope) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
7. **County Zoning:** The parcel is currently zoned as Open (open).
8. **Special Management Area:** The project parcel is located within the Special Management Area (SMA) and is located within the "shoreline area" as defined by section 205A-41, Hawai'i Revised Statutes (HRS).
9. **Flood Zone:** The majority of the project area is within Flood Zone "X", with a portion of the coastal area located within Flood Zone "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 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 \$1,000.00 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-2022-000030** is hereby approved to:

1. Remove two (2) trees from the subject parcel that are diseased and damaged.
2. Remove six (6) invasive trees.
3. Remove invasive species and conduct basic land management, including routine weed control, clearing of understory and tree pruning.
4. Plant native and endemic plants.

Pursuant to Planning Department (PD) Rule 11-7 a determination of minor activity in the shoreline setback area is issued for the basic land management such as routine weed control, clearing of understory and tree pruning via hand-pulling.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. PL-SMM-2022-000030**, 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. All activities in the Shoreline Setback Area (40 feet inland from the shoreline) shall be completed within one year from the date of approval of this determination.
3. 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.
4. Other than the proposed project as described in this permit, no further work is permitted under this approval.
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. The green waste must be contained within the subject parcel outside of the shoreline setback area or collected and disposed of off-site, either outside the Special Management Area or at appropriate locations designated by the Department of Environmental Management for the green waste.
8. Grading and the use of heavy equipment within forty (40) feet of the shoreline is strictly prohibited.
9. Any future land uses, activities or operations proposed for the subject property shall require further review and approval as provided under HRS Chapter, and Rule 9 of Planning Commission Rules of Practice and Procedure.
10. 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.
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 may initiate procedures to revoke the permit.

If you have any questions, please feel free to contact Tracie-Lee Camero at (808) 961-8166 or via email at tracie-lee.camero@hawaiiicounty.gov.

APPROVED:

Zendo Kern
Zendo Kern (Oct 26, 2022 12:50 HST)

ZENDO KERN
Planning Director

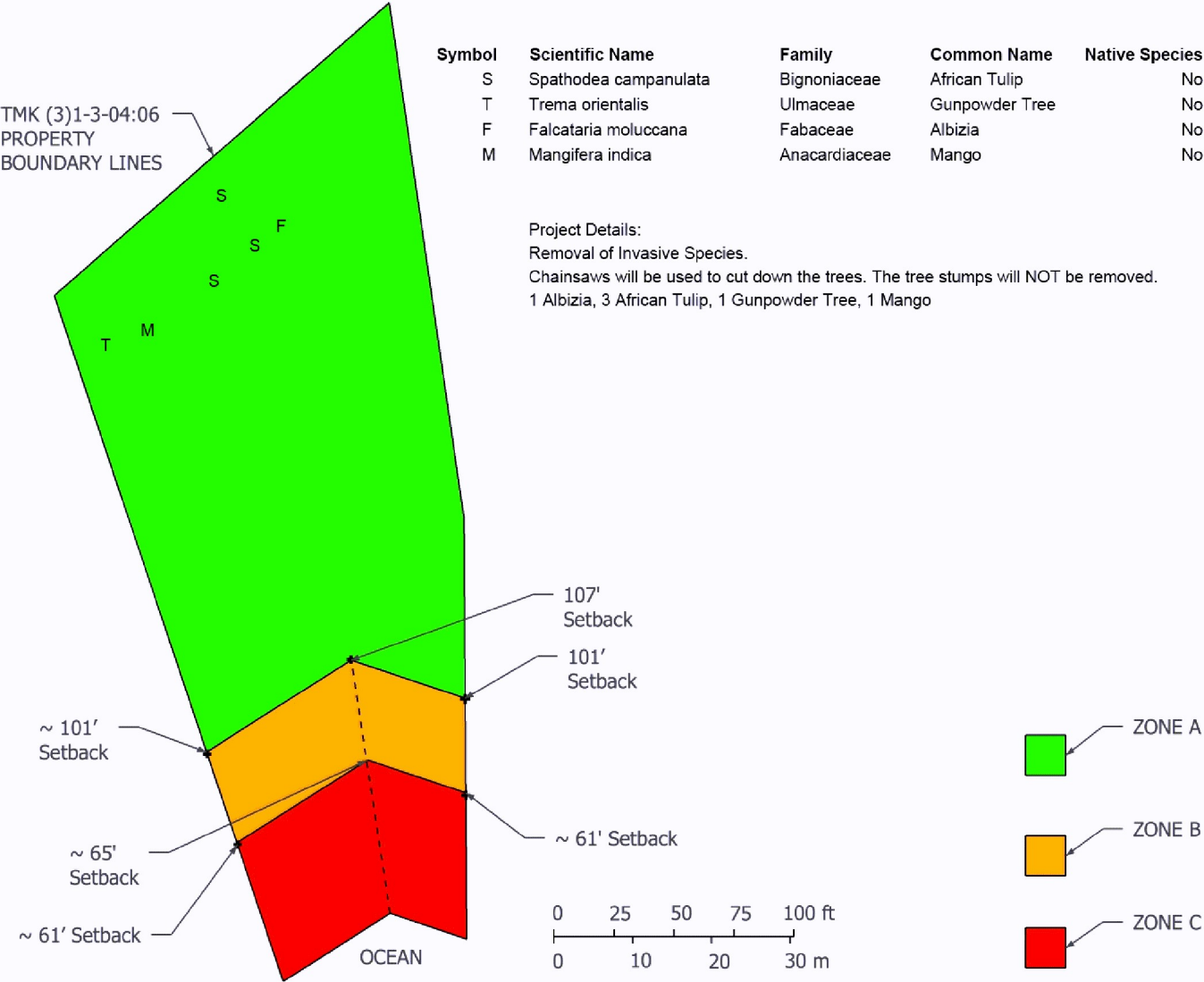
October 26, 2022

Date

SITE MAP: 001a-map



INVASIVE SPECIES REMOVAL



SITE PLANS: 001a-table

LIST OF LAND USE PER ZONE (A, B, C)

	ZONE A	ZONE B	ZONE C
(P-04:A-1) <i>Removal of Invasive Species</i>	YES	YES	YES
(P-11:A-1) <i>Removal of dead or diseased trees for non-commercial purposes</i>	YES	NO	NO
(P-13:A-1) <i>Basic land management, including routine weed control, clearing of understory and tree pruning</i>	YES	YES	YES
(P-13-A-2) <i>Planting of native and endemic plants</i>	YES	YES	NO
Removal of Native Species	NO	NO	NO
Vegetative Debris Removal	All invasive species vegetative debris will be removed from the property and disposed of at authorized disposal areas.		
Native Species Planting	Native species planting will be limited in this phase. Including but not limited to Pala'ā, a native fern, if it becomes available.		