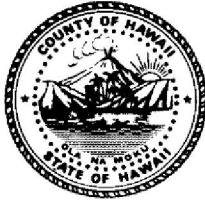


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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County of Hawai'i

PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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101 Pauahi Street, Suite 3
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July 25, 2022

Daryn Arai
P.O. Box 4501
Hilo, Hawai'i 96720
Email: Daryn.Arai@outlook.com

Dear Mr. Arai:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2022-000070)**

**Special Management Area (SMA) Minor Permit
(PL-SMM-2022-000021)**

Applicant: Daryn Arai

Landowner: Aloha Kou, LLC

**Request: Proposed Tree Removal, Grubbing and Minor Grading
Activities**

Tax Map Keys: (3) 2-6-002:001, 002 & 003, South Hilo, Hawai'i

We have reviewed the subject Special Management Area Use Permit Assessment Application (PL-SAA-22-000070) received by this office on March 30, 2022. The total land area of approximately 1.97-acres is zoned Resort-Hotel-7,500 square feet (V-.75) by the County and designated as Urban by the State Land Use Commission (LUC). The subject parcel is designated as "Medium Density Urban" (mdu) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The entire subject parcel is located within the Special Management Area (SMA); however, it is not considered a "shoreline parcel" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).

Existing Land Uses:

Special Management Area Minor Permit No. 78-42 (April 14, 1978) and Special Management Area Minor Permit No. 91-12 (May 21, 1991) were previously issued for various improvements on the subject parcel. Additionally, Special Management Area Use Permit 340 was granted by the Planning Commission on May 27, 1993, which was issued for the construction of a 24-unit

condominium complex and related improvements. SMA Use Permit 340 was revoked by the Planning Commission on July 16, 1999.

Proposed Project:

The applicant is proposing tree removal, gubbing and minor grading activities.

Purpose of Project:

The purpose of the tree removal is to remove heavy and extensive overgrowth in order to establish a scheduled maintenance program that will deter unpermitted activities, such as squatting, littering and other illicit activities.

Hawai'i Revised Statutes (HRS) Ch. 343 Determination:

The proposed project does not meet any of the triggers for environmental review in Hawai'i Administrative Rules (HAR) Section 11-200.1-9 (Applicability of Chapter 343, HRS, to applicant actions) and HRS Chapter 343-5, thus an environmental document is not required.

Additional Agency Reviews Conducted:

Based on the style and scope of the proposed project, the Planning Department solicited comments from other agencies that may have concerns or recommendations for the proposed project. The following outlines the agencies contacted and their comments:

State Department of Land and Natural Resources (DLNR): The following Divisions were contacted; DAR, Engineering, DOFAW, CWRM, OCCL, and Land Division (Hawai'i District). Comments were received from Engineering Division and DOFAW.

According to the Department of Land and Natural Resources Division of Forestry and Wildlife (DOFAW), the Hawaiian Hoary Bat or 'Ōpe'ape'a (*Lasiurus cinereus semotus*) could potentially occur in the vicinity of the project area and may roost in nearby trees. Bat birthing and pup rearing season spans from June 1st through September 15th. DOFAW reported that the Hawaiian Duck, Hawaiian Stilt, Hawaiian Coot, Hawaiian Goose (Nēnē) and the Hawaiian Hawk ('Io) as possibly occurring in the vicinity of the project area. It is against State law to harm or harass this species. Lastly, the State listed Hawaiian Hawk or 'Io may occur in the vicinity as well as the Hawaiian Monk Seal and threatened Green Sea Turtles. Furthermore, DOFAW has provided guidance on measures to avoid and minimize impacts to the listed species, in addition to guidance on avoiding the spread of invasive species and pathogens. Based on the preceding, the Planning Department will add this condition as well as standard conditions that the applicant comply with the requirements of DOFAW.

Special Management Area Determination:

According to Hawai'i Revised Statutes (HRS) Chapter 205A-44 and Planning Commission (PC) Rule No. 9-4(e)(1)(E), "development" includes "*Grading, removing, dredging, mining or extraction of any materials.*" Therefore, the proposed tree removal, grubbing and minor grading

Daryn Arai
July 25, 2022
Page 3


is considered to be development and will require a review against the Special Management Area rules and regulations.

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-2022-000021 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 questions regarding this document, please contact Tracie-Lee Camero of this office at (808) 961-8166 or via email at Tracie-Lee.Camero@hawaiicounty.gov.

Sincerely,


Jeffrey W. Darrow (Jul 25, 2022 10:18 HST)

ZENDO KERN
Planning Director

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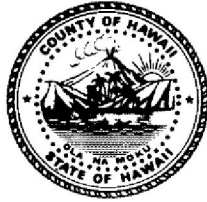
Enclosure: SMA Minor Permit No. PL-SMM-2022-000021

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

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Mayor

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Special Management Area Minor Permit No. PL-SMM-2022-000021

Project: Grading, Grubbing and Tree Removal
Applicant(s): Daryn Arai
Landowner(s): Aloha Kou, LLC
TMK(s): (3) 2-6-002:001, 002, and 003
Location: South Hilo District, Island of Hawai'i
Land Area: 1.4997 acres

Applicant's Request

- 1. Project Description:** This Special Management Area (SMA) Minor Use Permit is being pursued for the tree removal, grubbing and minor grading activities.
- 2. Purpose of Project:** The purpose of the tree removal is to remove heavy and extensive overgrowth in order to establish a scheduled maintenance program that will deter unpermitted activities, such as squatting, littering and other illicit activities.
- 3. Project Valuation:** \$150,000.
- 4. 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*" as defined as "development." Therefore, the proposed land clearing and vegetation removal of the subject parcels 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

- 5. State Land Use District:** The subject parcel is within the State Land Use Urban District.
- 6. General Plan:** The parcel is designated as "Medium Density Urban" (mdu) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
- 7. County Zoning:** The parcel is currently zoned as both Resort-Hotel (V-.75).

8. **Special Management Area:** The project parcel is located within the Special Management Area (SMA); however, no portion of the parcel is located within the “shoreline area” as defined by section 205A-41, Hawai‘i Revised Statutes (HRS).
9. **Flood Zone:** Zone X, AE, and VE (*Coastal areas with a 1% or greater chance of flooding and an additional hazard associated with storm waves*).

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 \$150,000 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-2022-000021** is hereby approved for tree removal, grubbing and minor grading activities, 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-2022-000021**, 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, including the Department of Land and Natural Resources Commission on Water Resource Management and/or the Department Land and Natural Resources Office on Conservation and Coastal Lands.
3. Prior to the commencement of any land altering or construction activities, sedimentation barriers (silt fences) shall be implemented on downhill slope of the project site to minimize potential run off or sedimentation and shall remain in place until final inspection has been granted for the proposed tree removal, grubbing and minor grading activities.
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. To protect any Hawaiian Hoary Bats in the vicinity of the property, barbed wire fencing shall not be used on the property and woody vegetation over 15 feet in height shall not be removed during bat breeding season of June 1st to September 15th.
7. If any state-listed waterbirds such as the Hawaiian Duck, Hawaiian Stilt, Hawaiian Coot or Hawaiian Goose (Nēnē) are present during any construction activities, cease all activities within 100 feet of the bird. Work may continue after the bird leaves of its own accord. If a nest is discovered at any point, the Hawai'i Island Branch DOFAW Office shall be contacted.
8. If trees are to be cut, particularly during the breeding season from March to September, the area shall first be surveyed to ensure no Hawaiian Hawk ('Io) nests are present.
9. If the State endangered Hawaiian Monk Seal and threatened Green Sea Turtle are present during any construction activities, cease all activities within 100 meters of the animal. Work may continue after the animal leaves of its own accord.
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. 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.
13. 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.

14. 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 Tracie-Lee Camero at (808) 961-8166 or via email at Tracie-Lee.Camero@hawaiiicounty.gov.

APPROVED:

Jeffrey W. Darrow
Jeffrey W. Darrow (Jul 25, 2022 10:18 HST)

ZENDO KERN
Planning Director

July 25, 2022

Date

TC:jaa

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Enclosure: Exhibit A, Site Plan

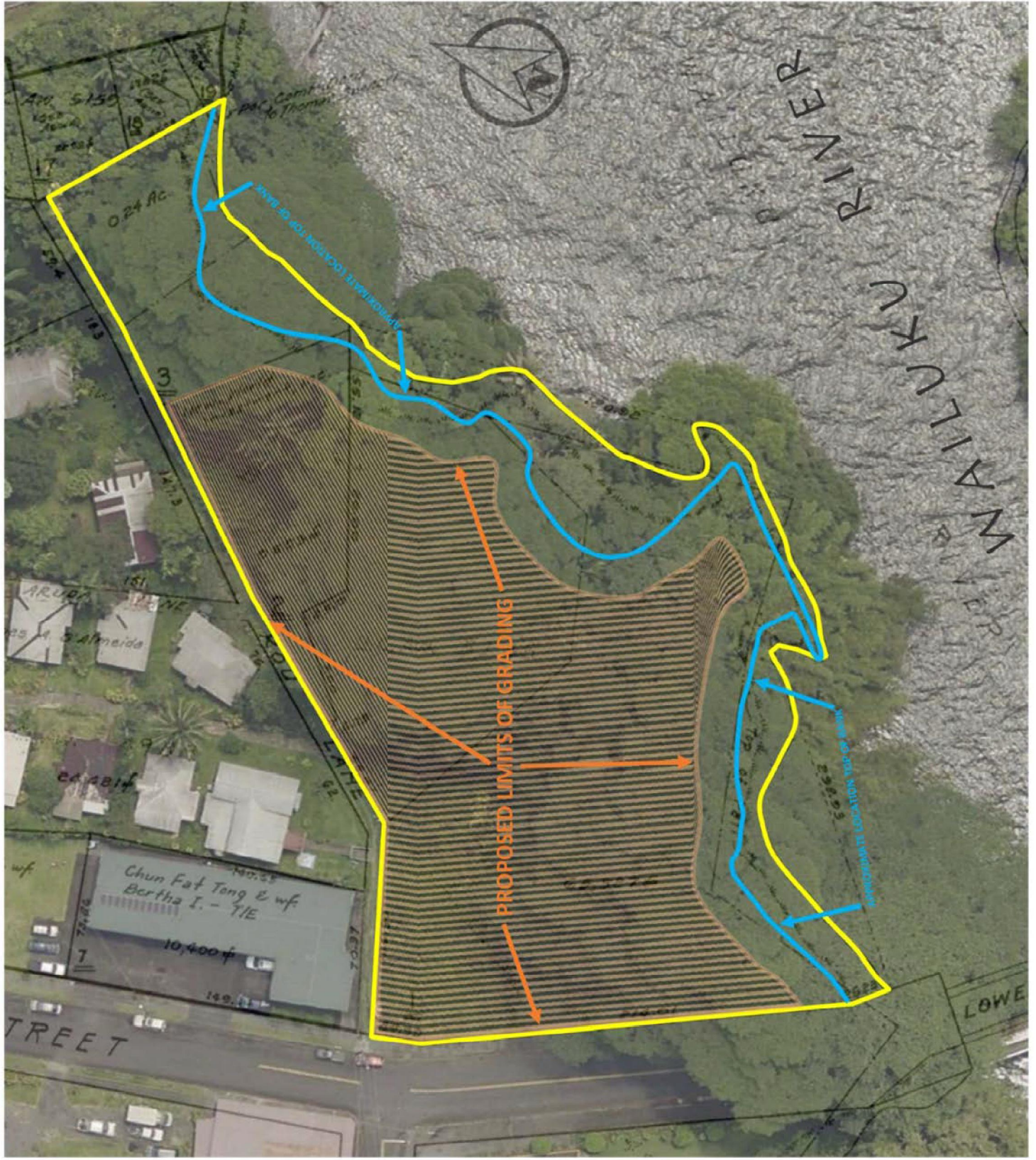


Figure 3 – Extent of Proposed Grading activities