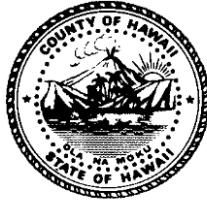


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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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

June 06, 2023

Jason Knable
c/o Carlsmith Ball LLP
121 Waianuenue Ave.
Hilo, HI 96720
VIA EMAIL

Dear Mr. Knable:

**SUBJECT: Special Management Area Use Permit Assessment Application
(PL-SAA-2023-000161)
Special Management Area Minor Permit
(PL-SMM-2023-000046)**

Applicant: Mauna Kea Resort LLC

Landowner: Mauna Kea Resort LLC

Request: Subdivide Property into Two (2) Parcels

TMK: (3) 6-6-002:037, Ouli & Lalamilo, South Kohala District, Island of Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2023-000161) received by this office on May 25, 2023. The applicant is requesting approval for a two (2) lot subdivision of the subject parcel (Lot 3). Staff notes the subject parcel was created through subdivision No. SUB-15-001516(r) in 2016; SMA approval for that subdivision was granted via SMA Use Permit Assessment Application (SAA) SAA-15-001284 on July 29, 2015.

The 28.83-acre subject parcel is zoned both Resort-Hotel 1,250 square feet (sf) (V-1.25) and Open (O) by the County and designated as Urban by the State Land Use Commission (LUC). The subject parcel is designated as both "Open" (ope) and "Resort Node" (ren) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The subject parcel is located within the Special Management Area (SMA), and it is considered a "shoreline parcel" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS). Since the proposed project is a subdivision of land with no associated construction activities, the Director has waived the requirement for a shoreline certification.

Special Management Area Determination:

Staff notes that the subdivision that created the subject parcel in 2016 was not considered “development” in accordance with Planning Commission Rule 9-4(e)(2)(M), which states: *Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.* Since the subject parcel to be subdivided was created via this exemption, the current proposed subdivision is therefore considered to be “development”.

According to Hawai‘i Revised Statutes (HRS) Chapter 205A-44 and Planning Commission (PC) Rule No. 9-4(e)(1)(E) relating to Special Management Area (SMA), “*Change in the density and intensity of use of land, including but not limited to the division or subdivision of land*” is defined as “development.” Based on the above, the proposed two (2) lot subdivision 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 under \$500,000 and will not have a cumulative impact or significant adverse environmental or ecological effect on the SMA.

Therefore, pursuant to Chapter 205A-22, Hawai‘i Revised Statutes (HRS), Special Management Area Minor Permit No. PL-SMM-2023-000046 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 questions regarding this document, please contact Alex J. Roy of this office at (808) 961-8140 or via email at Alex.Roy@hawaiiicounty.gov

Sincerely,

Zendo Kern

Zendo Kern (Jun 6, 2023 15:05 HST)

ZENDO KERN
Planning Director

AJR:mads

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Enclosure: SMA Minor Permit No. PL-SMM-2023-000046
Exhibit 1 – Site Plan

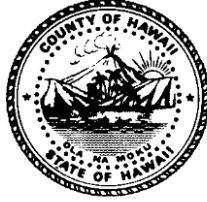
Jason Knable
Carlsmith Ball LLP
June 06, 2023
Page 3

cc via email w/enclosures: Shichao Li, State-OPSD
Lisa E. Webster, State-OPSD
GIS Section
Administrative Permits Division

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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Special Management Area Minor Permit No. PL-SMM-2023-000046

Project: Subdivide Property into Two (2) Parcels
Applicant(s): Mauna Kea Resort LLC
Landowner(s): Mauna Kea Resort LLC
TMK(s): (3) 6-6-002:037
Location: Ouli & Lalamilo, South Kohala District, Island of Hawai'i
Land Area: 28.83-acres

Applicant's Request

- 1. Project Description:** The applicant is proposing to subdivide a portion of the Westin Hapuna Beach Resort property to create a 2-lot subdivision with Hotel-Resort and Open split-zoning designations and no associated construction activities. No other work or development is proposed at this time.
- 2. Purpose of Project:** The purpose of the proposed project is to subdivide the subject parcel into two (2) separate lots of record.
- 3. Project Valuation:** \$28,000.
- 4. Determination:** Staff notes that the subdivision that created the subject parcel in 2016 was not considered "development" in accordance with Planning Commission Rule 9-4(e)(2)(M), which states: *Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.* Since the subject parcel to be subdivided was created via this exemption, the current proposed subdivision is therefore considered to be "development". Additionally, according to Hawai'i Revised Statutes (HRS) Chapter 205A-44 and Planning Commission (PC) Rule No 9-4(e)(1)(E), "*Change in the density or intensity of use of land, including but not limited to the division or subdivision of land*" is defined as "development." Therefore, the proposed subdivision of the subject parcel into two (2) lots 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 under \$500,000 and will not have a cumulative impact or a significant adverse environmental or ecological effect on the SMA.

State and County Plans

5. **State Land Use District:** The subject parcel is within the State Land Use Urban District.
6. **General Plan:** The subject parcel is designated as “Open” (ope), and “Resort Node” (ren) 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-1.25) and Open (O).
8. **Special Management Area:** The project parcel is located within the Special Management Area (SMA) and it is considered a “shoreline parcel” as defined by Section 205A-41, Hawai‘i Revised Statutes (HRS).
9. **Flood Zone:** FEMA designates the subject parcel as being: (1) within and along the Hapuna Gulch as a *Special Flood Hazard Area* (“AEF”), (2) at the gulch transition to the shoreline as “AE” with a BFE of 6-feet, and (3) the remaining area as “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. These adverse effects 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 proposed subdivision 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 \$28,000 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-2023-000046** is hereby approved for the proposed subdivision of the subject parcel (Lot 3) into two (2) new lots (Lot 3A and Lot 3B), 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-2023-000046**, 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 shall comply with all conditions and recommendations outlined in County Zoning Code relating to Subdivisions and shall apply for any variances required for the proposed subdivision, including, but not limited to, water and access.
4. The Applicant shall comply with all conditions of previous approvals, including, but not limited to SMA Use Permit No. 231 and SMA Assessment Application (SAA-15-001284).
5. The Applicant shall ensure that all public access easements to, through, and along the proposed subdivision remain open and accessible.
6. 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.
7. 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.
8. 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.
9. 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 Alex Roy at (808) 961-8140 or via email at Alex.Roy@hawaiiicounty.gov.

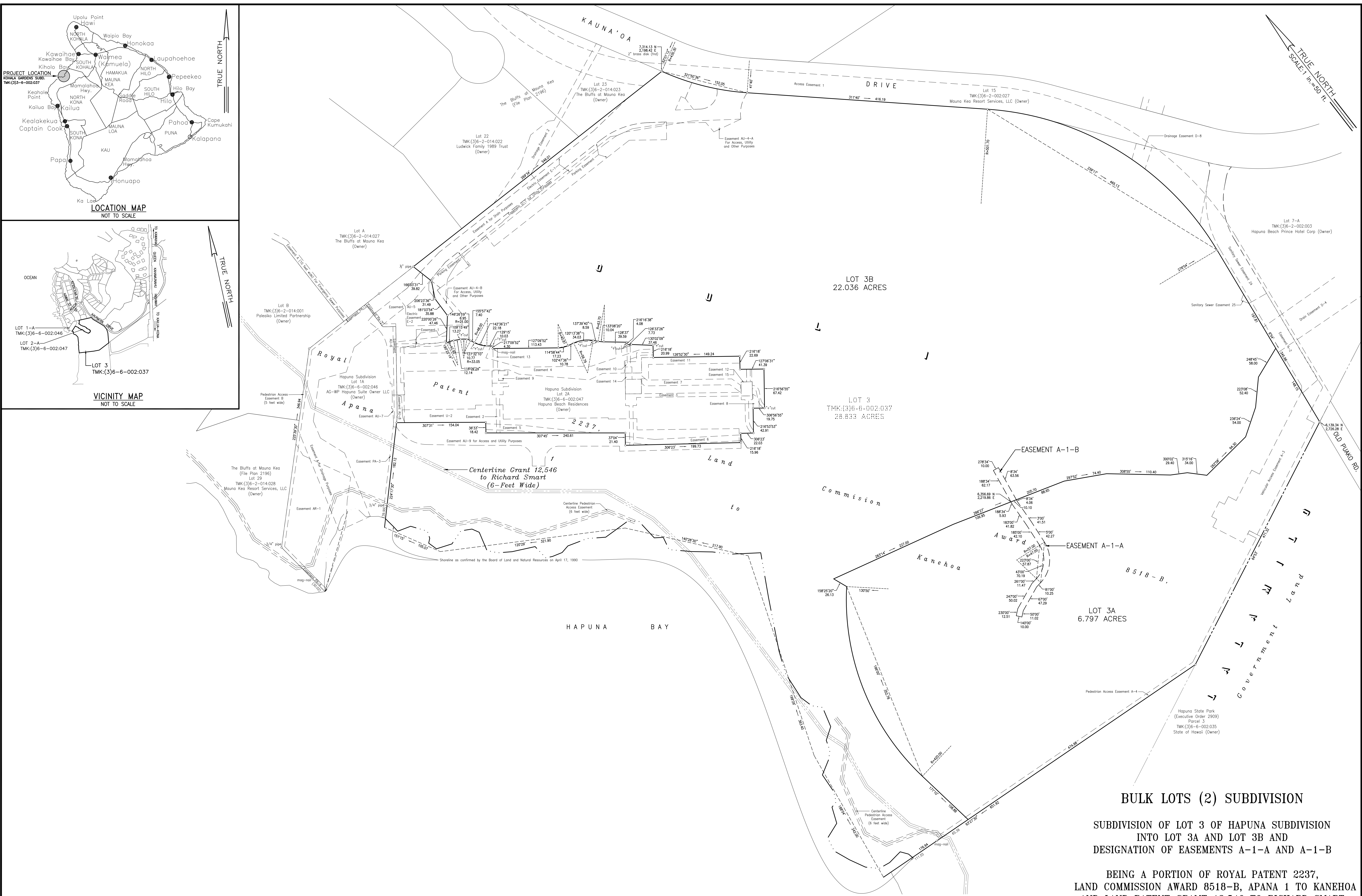
APPROVED:

Zendo Kern
Zendo Kern (Jun 6, 2023 15:05 HST)

ZENDO KERN
Planning Director

June 06, 2023

Date



NOTES:
1. AZIMUTHS AND COORDINATES SHOWN ON THIS MAP ARE REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "PUKO" Δ.
2. NAMES OF ADJOINING PROPERTY OWNERS ARE FROM RECORDS FILED AT THE REAL PROPERTY MAPPING BRANCH.
3. UNLESS OTHERWISE NOTED PROPERTY CORNERS ARE MARKED WITH 1/2" PIPE.

AREA OF EASEMENTS:
EASEMENT A-1-A FOR ACCESS PURPOSES AFFECTING LOT 3A OF KOHALA GARDENS SUBDIVISION = 2,291 SQ. FT. OR 0.053 ACRE
EASEMENT A-1-B FOR ACCESS PURPOSES AFFECTING LOT 3B OF KOHALA GARDENS SUBDIVISION = 629 SQ. FT. OR 0.014 ACRE

Planning Dept.
Exhibit 1

THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION.
ROMMEL C. OFALSA
LICENSED PROFESSIONAL LAND SURVEYOR
No. 10544
CERTIFICATE NO. 10544
License Expires: 4/30/2024

BULK LOTS (2) SUBDIVISION
SUBDIVISION OF LOT 3 OF HAPUNA SUBDIVISION
INTO LOT 3A AND LOT 3B AND
DESIGNATION OF EASEMENTS A-1-A AND A-1-B
BEING A PORTION OF ROYAL PATENT 2237,
LAND COMMISSION AWARD 8518-B, APANA 1 TO KANEHOA
AND LAND PATENT GRANT 12,546 TO RICHARD SMART
SITUATED AT OULI, WAIMEA, SOUTH KOHALA,
ISLAND OF HAWAII, HAWAII
TMK: (3) 6-6-002: PARCEL 037
TAX MAP KEY : (3) 6-6-002:037
OWNER : MAUNA KEA RESORT LLC
SITE ADDRESS : 66-100 KAUNAOA DRIVE
SOUTH KOHALA COAST, HAWAII 96743