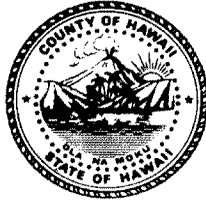


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## County of Hawai'i

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## **Special Management Area Minor Permit No. PL-SMM-2023-000050**

**Project:** Establish Farmers Market, Reconstruct Single-Family Residence, and Reestablishment of Fire Break Roads  
**Applicant:** Black Sand Beach, LLC  
**Landowner:** Black Sand Beach, LLC  
**Location:** Punalu'u, Kā'u District, Island of Hawai'i  
**TMK(s):** (3) 9-6-002:038 & 9-5-019:015  
**Land Area:** 143.58-acres

### **Applicant's Request**

#### **1. Proposed Project:**

The applicant is requesting approval for the following work:

**Part A:** located on a 1.5-acre portion of Parcel 15 to re-establish the firebreak roads via grading, and grubbing of vegetation:

- *The mauka firebreak road is approximately 1,176-feet long and 20-feet wide.*
- *The makai firebreak road is approximately 2,085-feet long and 20-feet wide.*
- *Additional work includes a stockpile of graded and grubbed material for composting.*

**Part B:** located on a 0.5-acre portion of Parcel 38 to establish the open market complex:

- *20 small farmers market vendor tents.*
- *10 retail tents of various sizes.*
- *1 visitor/Entertainment tent to provide information to visitors and will host educational activities related to the management and stewardship of Punalu'u.*
- *2 community tents for various uses.*
- *2 food trucks.*
- *Portable toilets.*
- *Parking will be provided across the street at an existing parking area. A pedestrian pathway will be identified to guide visitors from the parking area to the open market.*

*Additional work includes clearing of vegetation, laying of gravel and basecourse to provide a level walking area for open market complex, and some minor tree trimming. All open market structures will be "portable" requiring no foundations or permanent structures.*

2. **Purpose of Project:** The objective of the proposed project is to provide a venue for residents and community members to offer handicrafts and locally grown products to visitors, and educate tourists about the area and provide fire protection for the greater project area.
3. **Project Valuation:** \$200,000 (total): \$140,000 (“Development”), \$60,000 (Exempt)
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; Grading, removing, dredging, mining, or extraction of any materials,*” and “*Construction, reconstruction, or alteration of the size of any structure*” is defined as “development.” Therefore, the proposed project as described above is considered “development” and requires a review against the Special Management Area rules and regulations. Our review has resulted in the issuance of an SMA Minor Permit.

<b>State and County Plans</b>
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1. **State Land Use District:** The subject parcels are primarily within the State Land Use (SLU) Urban District.
2. **General Plan:** The project parcels are designated as “Resort” (res), “Open” (ope), “Medium Density Urban” (mdu), and “Low Density Urban” (ldu) by the Hawai‘i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The Part A project area is designated as RM-2.5 and Open while the Part B project area is designated as Village-Commercial 10,000 square feet (CV-10) by the County.
4. **Special Management Area:** The entire project area is located entirely within the Special Management Area (SMA); however, in accordance with HRS Ch. 205A-22, the subject parcel is not considered a shoreline parcel.
5. **Flood Zone:** VE, AE

<b>Compliance with Objectives and Policies of Chapter 205A, Hawai‘i Revised Statutes (HRS), Regarding the Special Management Area</b>
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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 effects 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.

<b>Findings</b>
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1. As discussed above, the proposed project will not have any significant adverse environmental or ecological effects, 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 project is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.
3. The estimated project cost of \$200,000 does not exceed \$500,000.

<b>Approved Uses, Activities and Operations</b>
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Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. PL-SMM-2023-000050** is hereby approved for the establishment of an open market complex and the re-establishment of firebreak roads within the subject parcels.

<b>Conditions of Approval</b>
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The Planning Director has approved **SMA Minor Permit No. PL-SMM-2023-000050**, 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. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant(s), successor(s) or assign(s) shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping shall be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawai'i County Code.
4. Other than the proposed project as described in this permit, no further work is permitted under this approval.
5. 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.
6. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
7. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
8. 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.
9. The Applicant shall include the location of all preserves, sites, preservation buffers or similar protection strategies on the site plan and all future maps submitted to the County in conjunction with any application reviews or approval requests.
10. Best Management Practices (BMP) shall be implemented prior to commencing any demolition or land altering activity and shall be maintained to serve their intended purpose throughout the construction process. BMP shall include, but are not necessarily limited to:

- a) The use of silt fencing, temporary surface run-off curbing and dewatering filter bags, shall be installed as may be necessary to prevent silt, sediment, soil and other displaced materials from being transported to any adjacent roadways, properties or storm drainage systems.
  - b) Dust containment fencing and/or frequent irrigation of exposed demolition areas, shall be employed as necessary to prevent adverse impacts on the adjacent roadways and properties from fugitive dust.
11. 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, after issuance of this permit, such information and data prove to be false, incomplete, or inaccurate (i.e., valuation of development), this permit may be modified, suspended, or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings.
12. In the event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, 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 (DLNR-SHPD) at (808) 933-7651. The Applicant shall also notify the Planning Department immediately after contacting the DLNR-SHPD.
13. 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).
14. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke this permit.

Black Sand Beach, LLC

October 04, 2023

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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](mailto:Alex.Roy@hawaiicounty.gov).

APPROVED:

*Zendo Kern*  
Zendo Kern (Oct 4, 2023 15:31 HST)  
ZENDO KERN  
Planning Director

October 04, 2023

Date