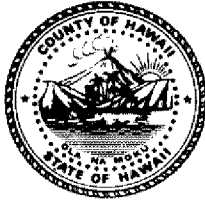


Mitchell D. Roth
Mayor

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Managing Director

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County of Hawai'i

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August 06, 2024

Basil Simon
42 Pukihāe St.
Hilo, HI 96720
VIA EMAIL

Dear Mr. Simon:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2024-000236)
Special Management Area (SMA) Minor Use Permit
(PL-SMM-2024-000065)**

**Applicant: Basil Simon
Landowner: 263 Commonwealth Avenue LLC
Project: Land and Resource Management and Fencing
TMK(s): (3) 2-6-001:024-026; 012; South Hilo District, Hawai'i**

We have reviewed the subject SMA Assessment Application, received by this office on July 10, 2024. This approval is being requested in part to comply with conditions of enforcement action PL-PCV-2024-000037 for unauthorized tree cutting and clearing of the subject parcels without SMA approval. The four (4) subject parcels total 48,677 square feet (sf) and are zoned resort-hotel 750 sf (V-.75) by the County and designated Urban by the State Land Use Commission (LUC). The subject parcels are designated as primarily Open (ope) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map; staff notes a small portion of the mauka side of the project area is under the Medium Density Urban (mdu) LUPAG designation. Only one (1) parcel (TMK: 326001012) has a permitted single-family residence constructed in 1996, with the remaining lots undeveloped.

The entire project area is located within the Special Management Area (SMA) with two (2) of the subject parcels to be considered within the "shoreline area" as defined by section 205A-41, Hawai'i Revised Statutes (HRS). Due to the proposed project (land and resource management) and the distance from the shoreline to the work area the Director has determined that a shoreline certification is not required for this proposed activity.

Proposed Project:

The applicant is requesting approval for the following work on the subject parcel:

- After-the-fact (ATF) approval for the removal of vegetation, and minor grubbing and grading of the site.
- Continue to remove invasive vegetation (trees).
- Landscaping using native vegetation.
- Construction of a 6-foot-high rock wall along the property boundary and outside the shoreline setback area.
- Construction of a 3-foot-high retaining wall in the interior of the project site to accommodate changes in grade.
- Small driveway extension to accommodate access to interior of project site.
- Installation of gates for property and pedestrian access.
- Planting of fruit trees and other agricultural related development.
- Continued upkeep and management of the project area.

The applicant estimates the total valuation of the project to be \$150,000 and has stated that no other work is proposed on the property at this time. The objective of the proposed project is to manage lands that are overgrown and replant with native vegetation and to conduct agriculture activities.

Shoreline Setback Area Determination:

Planning Department Rule 11-8 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 entire project area is located within the Special Management Area (SMA) with two (2) of the subject parcels located within the “shoreline area” as defined by section 205A-41, Hawai‘i Revised Statutes (HRS). Due to the location of the proposed activities, along with a shoreline determination by County staff, the Director has waived the requirement for a shoreline certification for this proposed project.

The proposed land and resource management project beach nourishment will be situated outside the County located shoreline setback area and will not alter grade or change or impact coastal processes in this area. The objective of the proposed project is to remove non-native vegetation, re-plant with native and fruit bearing trees, and to construct rock walls and gates for management of the site. Staff notes there is no deeded access to the shoreline in this area, however, the

applicant will provide access to any persons wanting to conduct subsistence fishing and gathering at the shoreline. The applicant has stated that no heavy machinery will be permitted in the shoreline setback area, and will utilize small tools (chipper, chainsaw) for the removal of any vegetation in the setback area.

Based on the preceding information, the Planning Director has determined that the proposed activity will not alter the existing grade of the shoreline setback area, will not block shoreline access, shoreline views, nor affect coastal processes, and will be installed by hand with no use of heavy machinery. Therefore, the proposed project, as described above, may be permitted in the shoreline setback area without the need for a shoreline setback variance pursuant to Planning Department Rule 11-4(a)(4).

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." Therefore, the proposed clearing of vegetation, the installation of a perimeter rock wall with gates, and the construction of an interior retaining wall to be located on the subject property 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 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.

Therefore, pursuant to Planning Commission Rule Section 9-10(e), Special Management Area Minor Permit No. PL-SMM-2024-000065 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 or via email at alex.roy@hawaiiicounty.gov

Sincerely,

Zendo Kern
Zendo Kern (Aug 6, 2024 13:04 HST)

ZENDO KERN
Planning Director

AJR:tc

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Basil Simon
August 06, 2024
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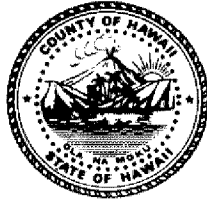
Enclosure: SMM Permit No. PL-SMM-2024-000065
Exhibit 1 – Site Plan

cc via email: Mark Iwamoto (Admin Permits Div.)
Katherine Proctor

Mitchell D. Roth
Mayor

Deanna S. Sako
Managing Director

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Special Management Area Minor Permit No. PL-SMM-2024-000065

Project: Land and Resource Management, Rock walls, Gates, and Agriculture
Applicant: Basil Simon
Landowner: 263 Commonwealth Avenue LLC
Location: Pu'ueo Lots, South Hilo District, Island of Hawai'i
TMK: (3) 2-6-001:024-026; 012
Land Area: 48,677 square feet

Applicant's Request

1. Project Description:

The applicant is requesting approval for the following work on the subject parcel:

- *After-the-fact (ATF) approval for the removal of vegetation, and minor grubbing and grading of the site.*
- *Continue to remove invasive vegetation (trees).*
- *Landscaping using native vegetation.*
- *Construction of a 6-foot-high rock wall along the property boundary and outside the shoreline setback area.*
- *Construction of a 3-foot-high retaining wall in the interior of the project site to accommodate changes in grade.*
- *Small driveway extension to accommodate access to interior of project site*
- *Installation of gates for property and pedestrian access.*
- *Planting of fruit trees and other agricultural related development.*
- *Continued upkeep and management of the project area.*

The applicant has stated that no other work is proposed on the property at this time.

- 2. Purpose of Project:** The objectives of the project are to remove dangerous and invasive trees and plant native and noninvasive trees, and to expand an existing fruit and flower garden
- 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)(B) and (E) relating to Special Management Area (SMA): "Grading, removing, dredging, mining, or extraction of any materials" is

defined as “development.” Therefore, the proposed land clearing and the construction of a perimeter wall and gates on 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 an SMA Minor Permit.

State and County Plans

1. **State Land Use District:** The parcels are all designated Urban by the State Land Use Commission.
2. **General Plan:** The subject parcels are designated as primarily Open (ope) with a small portion of the mauka side of the project area within the Medium Density Urban (mdu) by the Hawai‘i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The subject parcels are all zoned Resort-Hotel 750 sf (V-.75)
4. **Special Management Area:** The subject parcel is located in the SMA and two (2) of the subject parcels are considered a “shoreline” parcel according to Section 205A-41, Hawai‘i Revised Statutes (HRS).
5. **Flood Zone:** X & AE, with a Base Flood Elevation (BFE) of 19-feet.

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 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 project will aim to improve the area by removing invasive vegetation and replating with native species, as well as utilizing the land for agricultural purposes.
2. The proposed project is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.
3. The estimated project cost of \$150,000 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-2024-000065** is hereby approved for ongoing land and resource management activities, and the construction of a perimeter wall and gates on the above referenced parcels.

Conditions of Approval

The Planning Director has approved **SMA Minor Permit No. PL-SMM-2024-000065**, **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. Other than the proposed project as described in this permit, no further work is permitted under this approval.

4. 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.
5. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
6. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
7. The Applicant shall ensure that excessive runoff, sedimentation, siltation and turbidity of stream and ocean waters are contained or otherwise minimized through the use of silt containment devices or barriers, or other approved Best Management Practices as approved by the Planning Director.
8. The Applicant shall not, at any time, impede or otherwise restrict lateral public access along the shoreline fronting the subject parcel.
9. 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.
10. 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.
11. 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.
12. 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.

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 6, 2024 13:04 HST)

ZENDO KERN
Planning Director

August 06, 2024
Date

- VR1: Existing retaining rock wall (ongoing maintenance)

VR2: Existing retaining rock wall to be extended (ongoing maintenance)

VR3: Existing retaining rock wall (ongoing maintenance)

VRN1: New retaining rock wall inside of poorly maintained shared wall with neighbors, 6ft tall

VRN2: New retaining rock wall between upper and lower gardens

VRN3: Existing retaining rock wall (ongoing maintenance)

VRN4: New gate at makai end of driveway connecting existing walls W1 and WR1

VRN5: New gate at base of WS1

VRN6: New gate at makai end of driveway connecting existing walls W1 and WR1

VRN7: Existing retaining rock wall (ongoing maintenance)

VRN8: Existing steps up WR1 (ongoing maintenance)

VRN9: New gate at base of WS1

VRN10: New 6ft rock wall from shoreline setback to start of hill, 6ft tall

VRN11: New retaining rock wall inside of poorly maintained shared wall with neighbors, 6ft tall

VRN12: New pedestrian gate to road, 6ft tall (replacing gate in old fence)

VRN13: Repaired rock wall along road, increasing height to 6ft

VRN14: New retaining rock wall between upper and lower gardens

VRN15: Line of 3 rock wall planters (ongoing maintenance)

VRN16: New concrete driveway side ramp for vehicular garden access for tree pruning, wall maintenance, etc, partially over existing wall which also needs ongoing maintenance)
- M1 AREA: Fruit/Vegitable garden (unless otherwise indicated no tall trees, contains existing pineapple, tomato, papaya, and fig plants)

E1 AREA: Red ginger

L1-L2 AREA: Plumeria

S1 AREA: Fig and Guava trees

F1-F2 AREA: Hapu'u Ferns

D1 AREA: Citrus Trees

H1 AREA: Hala Trees

J1 AREA: Hau Trees

O1 Orchard Tree

A1: Avocado Tree
- Trees removed or to be removed:

xG1-xG6: Gunpowder Trees

xP1-xP18: Alexandra and Fan Palms

xFK2-xFK3: Young False Kamani Trees

Stumps to be removed outside of shoreline setback a
- Existing Trees/Bushes to be maintained:

P1-P3: Royal Palms

U1-U4: Ulu Trees

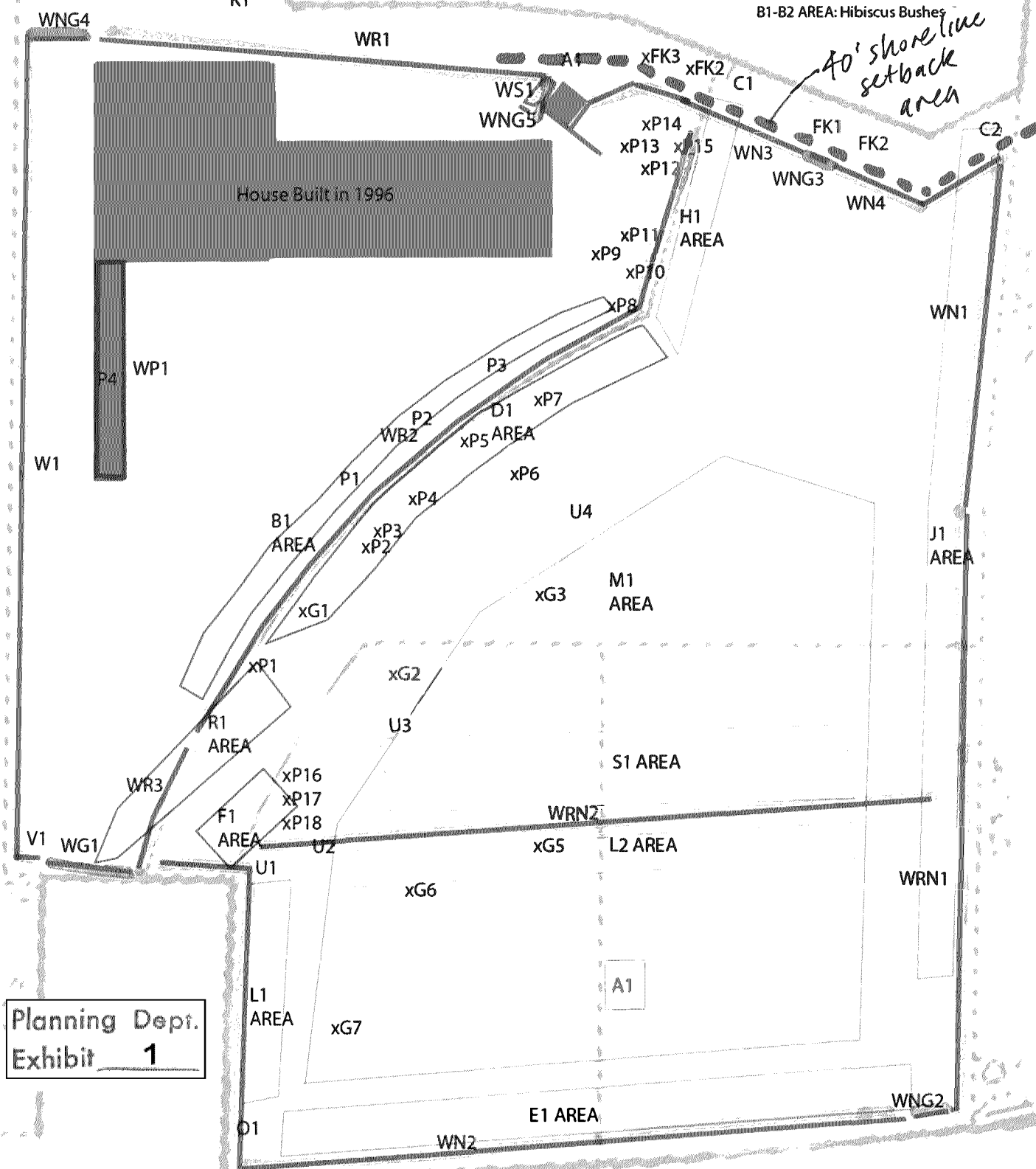
C1-C2: Coconut Trees

A1: Japanese Plum Tree

K1: Kamani Tree

V1: Samoan Gardenia Tree

B1-B2 AREA: Hibiscus Bushes



PL-SMM-2024-000065