

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

KERMIT JOHNSON
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2024-000065)

Upon careful review of the applicant's request against the guidelines for granting of a Special Management Area Use Permit, the Planning Director recommends that this request to construct a two (2) story, 6,402 square foot single family residence, with four (4) bedrooms and three (3) bathrooms and related improvements on a 27,878 square foot shoreline parcel within the Special Management Area (SMA) **be approved by the Windward Planning Commission**. Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this recommendation based upon additional information presented at the public hearing. This approval recommendation is based on the following:

The applicants proposed development consists of a 30-foot high, 2-story single-family dwelling with four (4) bedrooms, kitchen, wet-bar/kitchenette, living room, three (3) bathrooms, a three (3) car garage, and related development. Additional development includes the construction of an individual wastewater system (IWS), and driveway for access. The plan also accounts for stormwater management with appropriate grading and drainage systems, and landscaping areas have been strategically positioned to enhance visual appeal while maintaining the natural environment's integrity. The shoreline was certified for this parcel on July 12, 2022, and as such all development will be located well outside the shoreline setback area and staging of materials or use of heavy machinery is not proposed within the shoreline setback.

The grounds for approving development within the Special Management Area are based on HRS, Chapter 205A-26(2) (Special Management Area guidelines) and Rule 9-11(e) of the Planning Commission Rules of Practice and Procedure. Planning Commission Rule 9-11(e) states that the Planning Commission may permit the proposed development only upon finding that:

1. The development will not have any significant adverse environmental or ecological effect except as such an adverse effect is minimized to the extent

practicable and is clearly outweighed by public health, safety, or compelling public interest.

2. The development is consistent with the Special Management Area objectives, policies and guidelines as provided by Chapter 205A, HRS.
3. The development is consistent with the General Plan, Community Plan, Zoning Code, and other applicable ordinances.
4. The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
 - a. The identity and scope of valued cultural historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area.
 - b. The extent to which those resources including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - c. The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical, or natural resources including any existing traditional and customary native Hawai'i rights.

In review of the SMA guidelines as listed under HRS 205A-26(2)(A), the proposed 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.

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action on the Special Management Area. 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 eliminate planning options.

The proposed single-family dwelling is within a well-established residential development/subdivision that was created decades ago. Many of the shoreline parcels in this area are fully developed with single-family residential structures, related development, and landscaping. The Applicant has designed the development to be outside the 40-foot

shoreline setback boundary, and therefore no work will occur within or near the shoreline setback area. There is an existing 5-foot shoreline access pathway located three (3) parcels north of the subject parcel which is clearly marked and accessible via Ala Heiau Rd. and will not be impacted by the proposed project. Lateral shoreline access is located along the shoreline area makai of the project parcel. Based on the above factors, the proposed project will not significantly alter or impact coastal resources nor impact public access to and along the shoreline.

The subject parcel has been undeveloped within a well-established residential community for decades with the property considered overgrown with significant floral or faunal resources. The new residential structure, garage and related improvements on this property would have no adverse effect on natural beauty and scenic view planes since it is within a developed subdivision and has become unkempt and overgrown. The proposed project is in line with the existing residential development located throughout this area, and along Ala Heiau Road. Based on the small size of the parcel, the previously disturbed nature of the surrounding community, and design characteristics that incorporate modern finishes and energy efficient features (i.e., solar hot water), it is anticipated that no historic properties will be affected. Staff submitted the project for review by the State Historic Preservation Division (SHPD) for a HRS Ch. 6E-42 review; however, no response was received for the project review. The County has determined that based on the review of the site no historic properties would be affected by the proposed project. Additionally, there will be no change to the shoreline/fishing access or cultural practices that take place along this coastline.

In reviewing the proposed development against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1-10), it has been determined that the proposed project as described above will not have a significant adverse environmental or ecological effect upon the Special Management Area.

In review of the SMA guidelines as listed under HRS 205A-26, the proposed development is consistent with the objectives and policies as provided by Chapter 205A-26, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.

The purpose of Chapter 205A-26, Hawai‘i Revised Statutes (HRS) and Rule 9 of the Planning Commission Rules of Practice and Procedure, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options. The objectives and policies of Chapter 205A-26, HRS and Rule 9-10(h) include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas.

The proposed construction of a single-family dwelling, detached bedroom, garage, and related improvements is consistent with the objectives and policies of the Coastal Zone Management Program (Chapter 205A, Hawai‘i Revised Statutes) including:

Recreational Resources:

The proposed project will not impede coastal recreational opportunities. A 5-foot-wide public shoreline easement is located 3 parcels north of the subject parcel that will remain open and accessible for pedestrian access to the shoreline. The proposed action will not impact or change this shoreline access, nor will it interfere with or alter lateral shoreline access along the rocky shoreline in this area. All demolition and construction activities will be done outside the 40-foot shoreline setback area and behind an existing rock wall. No staging of materials or heavy machinery will be allowed in the shoreline setback area. Thus, the project will not inhibit any coastal recreational opportunities accessible to the public.

Historic Resources:

The small subject parcel is within a well-established residential community with similar single-family residences and related coastal developments such as pools and landscaping. The Applicant has stated that no valuable cultural resources and practices have been known to occur on the parcel. Additionally, there would be no historic resources, such as the shoreline public access and lateral shoreline access, that would be adversely affected by the proposed project.

Scenic and Open Space Resources:

The proposed project site is not visible from the vantage point of any public highway since there are no views from the nearest highway towards the project site. The

proposed project will not impact scenic or open space resources, and the use of a single-family residence is consistent with the other residential development located along this section of shoreline and the greater Hawaiian Paradise Park subdivision. Additionally, as this community has been developed for residential use for some time, the new proposed development would not present a new scenic impact. The proposed project will not impact on existing public access and would ensure continued access along the shoreline.

Coastal Ecosystems and Marine Resources:

The subject property abuts the shoreline; however, the design of the proposed residence and the conditions of construction permits will minimize potential impacts to coastal resources such as soil erosion. All mandated setbacks and government regulations related to runoff and nearshore waters will be adhered to. No threatened or endangered animal or plant species are present and as such no adverse impact to flora, fauna, or ecosystems would be expected to result from the proposed development or any activities associated with the use. The property includes an existing Individual Wastewater System that the applicant states is sufficient for the new development. The only native plant is the common naupaka which will be retained by the applicant. No native or endemic floral or faunal species are known or have been observed on the project site.

Coastal Hazards:

The property is predominantly within Flood Zone X with a small portion of the shoreline located within Flood Zone VE. Occupied structures are planned to be elevated above base flood elevations plus freeboard, and properly engineered to withstand wind and water loads. No work will occur within the 40-foot shoreline setback area which includes the VE flood zone. The proposed structures will not be subject to flooding since the dwelling will be built according to flood zone regulations and will be outside the 40-foot shoreline setback. The subject property lies between 20-30 feet above sea level and within the tsunami evacuation zone.

Based on the above information, the proposed development is consistent with the objectives and policies of Chapter 205A, HRS.

The proposed development is consistent with the County General Plan, Puna Community Development Plan (PCDP), Zoning Code, and other applicable ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) for the

County of Hawai‘i is a policy document expressing the broad goals and policies for the long-range development of the Island of Hawai‘i. The plan was adopted by ordinance in 1989 and revised in 2005. The LUPAG map designates the site as Rural (rur) and Open (ope). The Rural designation includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component and may contain small farms, wooded areas, and open fields as well as residences. Therefore, the proposed project is in-line with the Rural designation of this area and the shoreline area of the Hawaiian Paradise Park subdivision. The proposed action will retain the essential character of the land and will be consistent with the surrounding area and with the goals, policies, and standards of the General Plan. Additionally, the entire property and majority of the HPP subdivision is zoned by the County of Hawai‘i as Agricultural 1-acre (A-1a) with most parcels in this subdivision developed with single-family dwellings, small farming uses, rental properties, and related development. The newly proposed dwelling and associated improvements will be designed and constructed in a manner that is in keeping with the character of the neighborhood and will be setback from the shoreline further than some neighboring properties.

Lastly, the proposed development is consistent with the Puna Community Development Plan (PCDP). The PCDP was developed under the framework of the February 2005 County of Hawai‘i General Plan and was adopted in 2008 by the Hawai‘i County Council and amended by Ordinances Nos. 10-104, 11-51, 11-52, 11-53, 11-117 and 11-118 in 2010 and 2011). The applicant stated that “the proposed development is compliant with all land use plans and policies governing the site and surrounding area/neighborhood”, however, no specific were provided. Based on Staff’s review of the Puna CDP, the project does align with certain goals and objectives:

2.4.2 - *Strengthen the capacity of the County to identify important shoreline resources and evaluate development regulations and proposed developments in the shoreline area.* The proposed project will not affect or alter the current access to and along the shoreline in this area. Additionally, current regulations require the proposed project to be cited 40 feet from the shoreline, which is greater than a number of dwellings in this area which were built with the 20-foot shoreline setback requirement.

3.1.1 – (a)*Puna retains a rural character while it protects its native natural and cultural resources.* and (f)*native vegetation, coastal and historical resources are provided new forms of protection.* This project will be an improvement of the previously unkempt condition of the parcel, while preserving public access along the shoreline. The improved development of a modest single-family residence will be in character with the single-family and small farm development of Hawaiian Paradise Park.

The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist. In view of the Hawai‘i State Supreme Court’s “PASH” and “Ka Pa‘akai O Ka‘Aina” decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: Based on the previous land disturbance and development history, no historic properties or resources would be found on the subject parcel. In conformance with review criteria the project was submitted to the State Historic Preservation Division (SHPD) for a HRS, Ch. 6E-42 review; SHPD did not respond to our request, which may indicate they agree with the County’s determination that no historic properties would be affected by the proposed project.

The valuable cultural, historical, and natural resources found in the area: The applicant notes that the subject parcel contains no established public shoreline access easement. The nearest public mauka to makai shoreline access is located three (3) lots north of the subject parcel, and no changes to access or uses to, or along the shoreline makai of the project site are proposed or anticipated. It is not known whether the subject site or immediately surrounding area was ever used for the gathering of plants by native Hawaiians other than the shoreline and ocean which is outside the project area. Given the residential development of this community, it would appear very unlikely that the site would serve such a purpose today and/or in the recent past. Thus, the project does not appear to present any cultural impacts.

Possible adverse effects or impairment of valued resources: No floral or faunal species listed as threatened, endangered, or proposed for listing under the federal or state endangered species statutes are anticipated to be on the site. Additionally, no species used

for cultural gathering purposes were identified within the project area. The residential nature of the surrounding areas would make it less likely to find other protected or endangered animal life in this area other than what is found along the shoreline and ocean which is outside the project area. All construction activities will follow Best Management Practices to minimize adverse point and non-point pollution to coastal resources and surrounding areas.

Feasible actions to protect native Hawaiian rights: A 5-foot-wide public pedestrian access route to the shoreline runs through a private parcel three (3) lots north of the subject property from Ala Heiau Rd. This coastline is typically used for fishing and other gathering purposes. The lateral shoreline public access located makai of the project site will not be affected by this project.

Lastly, this recommendation for approval is made with the understanding that the applicant remains responsible for complying with all other applicable government requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, the proposed development will not have substantial adverse impacts on the environment, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is 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 new single-family residence and related improvements shall be conducted in a manner that is substantially representative of plans and details as contained within the SMA Permit application dated August 26, 2024, and representations made to the Windward Planning Commission.
- 4) Construction of the proposed development shall be completed within five (5) years from the effective date of this permit.
- 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 construction and maintenance activities shall comply with Chapter 27, Flood Control of the Hawai‘i County Code.
- 7) All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai‘i County Code.
- 8) All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- 9) The method of sewage disposal shall meet the requirements of the Department of Health.
- 10) During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai‘i.
- 11) The Applicant shall install a silt fence barrier along the entire length of the 40-foot shoreline setback area to ensure that no work or impacts affect the shoreline setback area. The barrier will remain in place until all construction activities are completed.
- 12) 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 archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

- 13) An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director under 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 and that are not the result of their fault or negligence.
 - B. Granting the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting the time extension would not be contrary to the original reasons for the granting of this permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- If the Applicant requires an additional extension of time, the Planning Department shall submit the Applicant's request to the Planning Commission for appropriate action.
- 14) Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.