

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

GREG GILLIOM AND KATHLEEN KISSEL
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2024-000066)

Upon careful review of the applicant's request against the guidelines for granting a Special Management Area Use Permit, the Planning Director recommends that this request to demolish an existing single-family dwelling and construct a new single-family dwelling on a 14,000 square foot shoreline parcel within the Special Management Area (SMA) **be approved by the Leeward 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 applicant requests a Special Management Area Use Permit to demolish an existing single-family dwelling and construct a new single-family dwelling on the project parcel located within the Special Management Area (SMA). The property contains a 1,400 square foot single-family dwelling originally constructed in 1956. The existing structure is set back 20 feet from a seawall that acts as the coastline. The applicant proposes demolishing the existing dwelling and replacing it with a new single-family dwelling that complies with current building codes, setback requirements and meets the needs of the applicant. The proposed dwelling will be a two-story, 3,825 square-foot dwelling with three (3) bedrooms, three (3) bathrooms, one (1) half-bathroom, an elevator, kitchen, living room, great room, laundry room, accessibility ramp, and a two (2) car garage. A pool and spa are proposed to be constructed on the makai side of the home. The applicant intends to close an existing cesspool pool and install a new advanced aerobic wastewater treatment unit in accordance with Department of Health (DOH) regulations; potable water will be provided via an existing Department of Water Supply (DWS) water meter.

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 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 in 1955. Many of the shoreline parcels in this area are fully developed with one and two story single-family residential structures, related development, and landscaping. The Applicant has designed the development to be outside the 40-foot shoreline setback boundary, with the makai portion bounded by a legally non-conforming seawall. There is an existing shoreline access pathway on a County owned parcel adjacent to the subject parcel, with lateral shoreline access located along the shoreline area makai of the project parcel. The applicant originally proposed utilizing the public and parking access for access into the subject property, but changed the plans in response to community input. The applicant is now proposing access to the property directly from Puako Beach Drive on the mauka side of the property. Therefore, the public shoreline access road stub out will remain clear and unblocked and will not be impacted by the proposed project. No work, staging, or placement of heavy machinery will occur within the 40-foot shoreline setback area. 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 parcel is landscaped with common native and non-native plants; however, it is not anticipated that any rare or endangered floral or faunal species would be found on the parcel, nor would any be affected by the proposed project. A new dwelling, pool, garage and other related improvements on this property would have no adverse effect on natural beauty and scenic view planes since it has been developed for over 60 years. The proposed project is in line with the existing residential development located throughout the Puakō Beach community. Based on the small size of the parcel, the previously disturbed nature of the project site, and design characteristics, it is anticipated that no historic properties will be affected, and there would be no change to the shoreline/fishing access or cultural practices that take place along this coastline or access via the County parcel located south of the project parcel.

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 to demolish an existing single-family residence and construct a new single-family residence and related development on a 14,000 square foot parcel of land 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 demolition of an existing single-family dwelling, and the construction of a new single-family residence 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 public shoreline accessway is located adjacent to the subject site. The applicants, after hearing from concerned neighbors, changed the driveway ingress from the county owned road stub out to directly off Puakō Beach Drive on the mauka side of the property. As such, the proposed action will not impact or change this existing shoreline access and road stub out will remain clear for public use. Lateral shoreline access will not be affected by the project. All demolition and construction activities will be done outside the 40-foot shoreline setback area and behind an existing seawall. 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 one- and two-story single-family residences and related 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 (state Route 19) 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 homes along this section of shoreline, as well as the subject parcel which has included a dwelling structure since 1956. The proposed project will not impact existing public access and would not adversely affect any sightlines or scenic resources 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. Additionally, the applicant plans to close an existing cesspool and install an Advanced Aerobic Wastewater Unit for the proposed development, which will further minimize potential impacts to coastal waters that are prevalent in this area due to old cesspools and septic systems. The property contains an existing dwelling structure and landscaping with non-native vegetation such as palms, and trees. 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 eight (8) and ten (10) feet above sea level and within the tsunami evacuation zone, however, a Civil Defense siren is located approximately 0.2 miles to the north of the subject property.

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, South Kohala Community Development Plan (SKCDP), 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 Low Density Urban (ldu) which is intended for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses with an allowable overall residential density of up to six (6) units per acre. Therefore, the proposed project is in-line with the Low-Density Urban designation of this area and the Puakō Beach 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 is zoned by the County of Hawai'i as Single-Family Residential – 10,000 square feet (RS-10) as well as the surrounding properties within the subdivision which are all zoned RS-10 with most parcels developed with single-family dwellings. These properties range in size from approximately 10,000 to 20,000 square feet. 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.

Lastly, the proposed development is consistent with the South Kohala Community Development Plan (SKCDP). The SKCDP 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 Planning Commission. The requested project aligns with the following policies of the South Kohala Community Development Plan:

Managing the effect of growth and development: The proposed project is the demolition of a 60-year-old single-family dwelling and the construction of a new single-family dwelling and related improvements in keeping with the surrounding area’s character of low density, one- and two-story single-family homes. The proposed project will not result in any change to the area’s character or increase in density and will be built in accordance with current County and building codes.

Natural Resources and Shoreline: The proposed project will protect and preserve the quality of areas endowed with natural beauty, including the quality of coastal scenic resources as the project will be developed with restraint to coastal impacts. The applicant supports a conservative approach to the conservation of the shoreline, and will not impact or alter the shoreline, or public shoreline access to the shoreline located south of the project site. Additionally, the proposed project will not include any development within the shoreline setback area and will utilize Best Management practices during construction to minimize any coastal impacts during construction.

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 long development history of the subject parcel it is highly unlikely that any historic sites will be found on the property. In conformance with review criteria the project was submitted to the State Historic Preservation Division (SHPD) for a HRS, Ch. 6E-42 review. SHPD responded with a determination “No historic properties affected pursuant to HAR §13-284-7(a)(1)”.

The valuable cultural, historical, and natural resources found in the area: The applicant notes that the subject parcel is located adjacent to an established public shoreline access pathway that is currently used for shoreline access and includes areas for the public to park. This is consistent with the other county owned roadway stub out found in the community. No changes to access or uses 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 the area, it would appear very unlikely that the subject property 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 were identified 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, 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 40-foot-wide public pedestrian access route to the shoreline runs through the County owned parcel located adjacent to the subject property. According to the County's Shoreline Access website, this coastline is used for hiking, swimming, fishing (with restrictions), kayaking and surfing. 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 October 21, 2024, and representations made to the Leeward 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, lava tube openings 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) The Applicant shall not, at any time, impede or otherwise restrict public access and parking within the public pedestrian access and road access located adjacent to the subject parcel.
- 14) An initial extension of time for the performance of conditions within this permit 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 and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of 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 should require an additional extension of time, the Planning Department shall submit the Applicant's request to the Planning Commission for appropriate action.

- 15) 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.