

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

KONA HAWAII DEVELOPMENT, LLC
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2023-000038)

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 develop a 100-room hotel and related improvements using a partially completed foundation structure on 1.76 acres of land the Special Management Area be approved by the Planning Commission.** Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/ 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 use the existing foundation, footprint, and basement area to develop a three (3) story hotel that includes 91 suites with kitchenette, and nine (9) standard guest rooms (100-rooms total) to be operated as a Residence Inn by Marriott. The proposed suites will consist of two (2) bedrooms, and the site will also include a dining area, an outdoor pool, and a bar. The underground parking area will accommodate 143 parking stalls, that includes handicapped parking and (two) parking stalls with charging stations for electric vehicles. Additional work includes the construction of a 7-foot-wide sidewalk along the property boundary with both Ali'i Drive and Kahakai Road to accommodate pedestrians and access in the area, and landscaping using native plants and drought tolerant species will be utilized to mitigate viewplane impacts.

The applicant is pursuing this project to complete the partially constructed development while providing accommodations that cater to the specific needs of visitors to Kona as opposed to vacation rentals or Bed & Breakfasts located in residential areas.

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 Authority (Planning Commission) may permit the proposed development only upon finding that:

1. The development will not have any substantial 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 objectives and policies and the Special Management Area 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 Hawaii rights.

In review of the SMA guidelines as listed under HRS 205A-26(2)(A), the proposed development will not have any substantial 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 project did not meet the criteria in State law for the requirement of

an environmental assessment or environmental impact statement. The use of an existing large foundation that has been dormant on Ali‘i Drive will not generate any adverse effects, and appropriate mitigation in relation to viewplanes, pedestrian access, and community character will be conducted to minimize additional adverse impacts.

In review of the SMA guidelines as listed under HRS 205A, the proposed development is consistent with the objectives and policies as provided by Chapter 205A, 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, Hawai‘i Revised Statutes (HRS) and Special Management Area Rules and Regulations of the County of Hawai‘i, 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, HRS 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.

Coastal Recreational Resources: There are no specific or identified recreational activities located on the subject parcel, however, there is an existing shoreline access pathway that runs along Kahakai Road south of the subject parcel to the shoreline. The proposed project will not impact this pathway or interfere with shoreline access in this area. As this project is not on the shoreline, and there is existing development between the ocean and project area, there is no anticipated impact to coastal recreational resources. Therefore, the proposed project will not have any impact on the coastline or other areas utilized for public recreational activities at the shoreline, nor would it impede or hinder the public’s ability to access the shoreline.

Historic and Cultural Resources: Other than the access at the shoreline makai of the subject parcel, there are no known traditional native Hawaiian or valued cultural resources that exist upon the subject property. The property has been developed previously, first with a mini-golf course, with a foundation to support the proposed hotel/condominium

development. The site has been completely cleared and is predominantly developed with a large foundation and underground parking area which was previously approved for construction. Based on their previous reviews, the State Historic Preservation Division (SHPD) determined that “no historic properties would be affected” by the grading of the site and subsequent development of the foundation. However, SHPD has requested that they be contacted if additional ground disturbance is proposed. The Planning Department submitted a review request to SHPD via their online review system HICRIS; to date no response has been received.

Scenic and Open Space Resources: As noted in the application, coastal views are already blocked via the existing development located on the shoreline. While this project will have some measure of visual impact, they are not considered significant from Ali‘i Drive. Comments were received regarding the proposed development’s impact on coastal views from the mauka (landward) side of Ali‘i Drive. The applicant has stated that the proposed development will abide by the current height limits of the zoning district and note that the heights were reduced slightly from the previously approved project. The applicant has stated it is their goal to minimize viewplane impacts by recessing the structure 20-feet from Ali‘i Drive, adding landscaping/screening in that setback area, and utilizing colors and building materials that will blend with the surrounding area.

Coastal Ecosystems, Marine Resources, Beaches: The proposed development is located approximately 125 feet from the shoreline at its closest point, and as such no direct impacts to coastal ecosystems will occur due to the proposed hotel. Although the project will increase stormwater collection in this area, it will be directed to existing or new drywells located on site and away from the shoreline. These drywells will be subject to the UIC permit, which specifically addresses impact to groundwater and nearshore resources. Additionally, wastewater generated by the proposed development will be connected to the existing County sewer line that fronts Ali‘i Drive, therefore no direct injection of sewer water into the subsurface will occur. Access to the shoreline, via a pathway that runs along Kahakai Road, will remain open and will not be affected by the proposed project.

Coastal Hazards: The subject parcel is located within Flood Zone X which represents *areas determined to be outside the 500-year flood plain*. The project area is

located approximately 125-feet from the shoreline area, therefore there are no anticipated coastal or flood hazards that will significantly impact the project site. The development will be subject to the requirements of Chapter 27 - Flood Control, of the Hawai‘i County Code in order to minimize the effects of coastal hazards. In addition, all buildings will be constructed in conformance with Uniform Building Code specifications. In the event of a tsunami or other major weather event, the evacuation of this site would be via Ali‘i Drive to Walua Road.

The proposed development is consistent with the County General Plan, Hilo Community Development Plan (CDP), 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 proposed development is consistent with the General Plan LUPAG Map designation of Resort Node (ren) which includes areas that are *a mix of visitor-related uses such as hotels, condos, single-family and multiple family residential units, golf courses and other typical resort recreational facilities, resort commercial complexes, and other support services*. Staff notes that the project site has been designated as a “minor resort area”, under the General Plan section on Standards and as designed will complement the goals, policies, and standards of the Land Use (Economic, Environmental and Land Use) Elements of the General Plan. The proposed action is in balance with the natural, cultural, and social environment of the County, and it will create temporary construction jobs for local residents and indirectly affect the economy through construction industry purchases from local suppliers as well as permanent jobs for employees of the hotel and bar.

The Hawai‘i County Department of Planning zoning designation for the subject parcels is “Resort-Hotel” 750-sq. ft. (V-.75). The proposed hotel project is a permitted use within the V zoning district and does not require a Use Permit. The development will conform to the requirements of the zoning district relative to permissible uses, maximum allowable height, minimum yard setbacks, minimum off-street parking, and landscaping requirements.

Lastly, the proposed development is consistent with the Kona Community Development Plan (KCDP). The KCDP (as amended) was adopted by the Hawai‘i County Council by Ordinance No. 19-91 on September 18, 2019, and guides decisions within the Kona Urban Area and surrounding regions.

The project site is located within an area adequately served with essential services such as water, electricity, and telephone. Wastewater will be directed to the existing sewer line along Ali‘i Drive, and stormwater will be retained on site via drywells or other supporting structures. Additionally, the DEM-Wastewater Division is requiring a sewer study be completed and approved by the DEM prior to connecting to the County sewer line. The applicant will be responsible for constructing additional sewer lines or other facility improvements as is required by the Director of DEM. Additionally, DEM-Solid Waste Division is requiring a Solid Waste Management Plan be submitted and approved by DEM prior to occupancy of the hotel. Staff notes that according to the Commission on Water Resource Management (CWRM), they have concerns on whether existing Department of Water Supply (DWS) capacity can meet the additional proposed demand of 22,000 gpd for the hotel. Should any new water source (wells) development be necessary to meet this demand, the CWRM has concerns about the new source impacts on native hawaiian traditional and customary rights as well as groundwater dependent ecosystems that could be impacted.

While there are no anticipated traffic impacts from the proposed project, the pedestrian access around the subject parcel will be improved. The applicant has stated that the design incorporates a 7-foot-wide sidewalk to accommodate pedestrians along Ali‘i Drive and Kahakai Road. However, according to the Department of Public Works, “*DPW’s current sidewalk is 8-feet wide rather than the proposed 7-foot-wide sidewalk.*” The applicant addressed this comment stating that the 8-foot-wide sidewalk along Alii Drive is feasible, however, it is not feasible for the sidewalk along Kahakai Road which is a much narrower right-of-way than Ali‘i Drive.

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: A draft Archeological Assessment (AA) of the subject parcel was completed in June 2023 which was submitted to the State Historic Preservation Division (SHPD) for review under Ch. 6E-42; to date SHPD has not responded. However, previous approvals (SMA, Building Permits) were reviewed by SHPD who determined that, for the grading of the entire parcel, no historic properties would be affected. Additionally, according to the AA, due to the absence of archaeological sites within the parcel, and the long history of ground impacts from development, no further archeological work is recommended based on the survey.

The valuable cultural, historical, and natural resources found in the area:

The valuable cultural or natural resource in the area is the shoreline which is accessible via a pedestrian access path located on the southern side of the subject parcel along Kahakai Road. There are no resources found on the subject parcel as it has been completely developed with a large foundation structure and has been completely cleared during previous development of the site.

Possible adverse effects or impairment of valued resources: There is no evidence that the flora in the area is particularly desired or used for cultural practices, however, Hawaiian fishing rights along the shoreline will not be affected by this project since the existing access will not be impacted by the proposed development.

Feasible actions to protect native Hawaiian rights: The proposed development will not restrict access to, and the use of natural resources at the shoreline as the subject property will not impact or affect the existing shoreline access. A condition of approval has also been added to protect any unidentified cultural, historical, and natural resources in the event any are encountered during construction. To the extent that traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights.

Lastly, this 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 of a 100-room hotel and related improvements 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 of the 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 and operation of the proposed 100-room hotel shall be conducted in a manner that is substantially representative of plans and details as contained within the Special Management Area Use Permit application dated September 6, 2023, and representations made to the Leeward Planning Commission.
4. The Applicant shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the Department of Water Supply for review and approval to ensure the project will not exceed the existing 22,000 gallon per day entitlement.
5. The Applicant shall implement any improvements required by the Fire Department and/or Department of Water Supply to ensure that fire protection requirements can be met for commercial uses prior to issuance of a Certificate of Occupancy.
6. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the Applicant 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.

7. All driveway connections to Ali‘i Drive and Kahakai Road shall conform to Chapter 22, County Streets, of the Hawai‘i County Code.
8. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai‘i County Code.
9. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai‘i County Code.
10. The Applicant shall not, at any time, impede or otherwise restrict public access to the shoreline along Kahakai Road.
11. 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.
12. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study shall be prepared by a professional civil engineer licensed in the State of Hawai‘i and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy for any portion of the development.
13. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
14. Sewer lines shall be installed within the development to connect with the County’s sewer system, meeting with the approval of the Department of Environmental Management, and

prior to the issuance of a Certificate of Occupancy.

15. 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.
16. A National Pollutant Discharge Elimination System (NPDES) permit, if required, shall be secured from the State Department of Health before the commencement of construction activities.
17. 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, 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 an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
18. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
19. 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, 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 General Plan or Zoning Code.
 - C. The 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).

E. 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.

20. 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.