

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

JEKATERINA MYSIN
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION (SMA 21-000078)

Upon careful review of the applicant's request against the guidelines for a Special Management Area Use Permit, the Planning Deputy Director is recommending that **this request to construct a six (6) unit condominium and related improvements be approved by the Leeward Planning Commission.** Since this recommendation is made without the benefit of public testimony, the Deputy 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 findings:

The applicant, Jekaterina Mysin, has submitted an application for a Special Management Area (SMA) Use Permit to construct a six (6) unit condominium and related improvements on the 9,934 square foot subject property. The project will consist of four (4) 2-bedroom/3-bathroom units and two (2) 3-bedroom/5-bathroom units within a 45-foot high, five (5) story structure with parking at ground level under the building; additional off-street parking will be provided. A pool, lanai sitting area, and landscaping will also be included in the development.

When reviewing proposed developments within the SMA, the Planning Commission should follow the below listed guidelines as established within HRS 205A-26 (SMA guidelines):

No development shall be approved unless the Planning Commission has first found:

- (A) That the 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 interests. 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.

(B) That the development is consistent with the objectives, policies, and Special Management Area guidelines of this chapter and any guidelines enacted by the legislature; and

(C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

In review of the SMA guidelines as listed under HRS 205A-26(2) (A) above, the proposed development of the subject parcel 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 Deputy 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. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken might not have a substantial adverse effect and elimination of planning options.

A "substantial adverse effect" is determined by the specific circumstances of the proposed use, activity, or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Deputy Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. The project has been reviewed against the factors that may constitute a substantial adverse effect as listed under Planning Commission Rule 9-10 (H) (1 through 10):

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and viewplanes outlined in the General Plan or other adopted plans.
- (2) curtails the range of beneficial uses of the environment.
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan.

- (4) substantially affects the economic or social welfare and activities of the community, County or State.
- (5) involves substantial secondary impacts, such as population changes and effects on public facilities.
- (6) in itself has no substantial adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions.
- (7) substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat.
- (8) detrimentally affects air or water quality or ambient noise levels.
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

It should be noted that under Planning Commission Rule 9-10 (H) (9), a proposed use, activity or operation may constitute a substantial adverse impact if it affects an environmentally sensitive areas, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal water. In this review, it has been determined that the subject property is located approximately 200 feet from the shoreline, and the proposed project will not have any activity within the shoreline area. Additionally, the shoreline public access trail located adjacent to the subject parcel will not be affected by this project and pedestrian access along this trail will remain at its current state throughout the project development and use.

Some unavoidable visual impacts will occur from the proposed development; however, they will be moderate due to the existing development located makai of the project site and topography of Ali'i Drive. Presently there are no coastal views from Ali'i Drive across the subject property due to the adjacent existing condominium. The project site is currently overgrown with non-native and invasive trees and shrubs; therefore, the development and associated landscaping will aim to improve the visual nature of the site and align with the existing development located on adjacent parcels.

The entire project site is located at 25-30 feet elevation above sea level, and within the FEMA-FIRM flood zone "X", which is for areas outside the 500-year floodplain. The applicant will be required to comply with appropriate flood zone requirements outlined in County Code (i.e., Chapter 27, Floodplain Management). As such, the proposed development will not create a substantial adverse effect on any environmentally sensitive areas, public sites, or natural resources.

The development of a six (6) unit condominium adjacent to hotels, single-, and multi-family dwellings and other condominiums would not tend to produce adverse cumulative impacts as site development would be contained within the parcel. Noise, air, and other impacts will be minimal and typically occur during development and construction activities. The addition of six (6) new dwellings may increase traffic incrementally, however traffic impacts would most likely be minimal. Furthermore, the proposed project is not related to other developments or building sites in the region in such a way as to produce adverse cumulative effects or involve a commitment of larger actions.

Although no professional floral and faunal survey of the site was completed, the urban and highly altered nature of the surrounding area makes the presence of rare or sensitive flora and fauna unlikely. Site vegetation consists primarily of haole koa scrub and various non-native grasses and vines. Because of this, along with limiting development to the subject parcel only, no impacts to any terrestrial biological resources would occur, and impacts to the ocean and the aquatic resources they support will be avoided. No historic sites are present, and there will be no adverse impacts to cultural resources or practices, which benefit from a public access trail located adjacent to the subject parcel.

In review of the SMA guidelines as listed under HRS 205A-26(2) (B) above, 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:

The proposed project will support public coastal recreational opportunities through maintenance of land adjacent to an established public shoreline access. Further, this project represents an opportunity to increase stewardship of an unused and overgrown property in an area dominated by residential and vacation-type development. The proposed project would not restrict any shoreline uses such as fishing, surfing, and other water-dependent activities. Parking for the shoreline public access will continue to be along Ali'i Drive and will retain its current level during construction and the continued use of the parcel.

Historic Resources:

The proposed project parcel has no indication of any historic sites other than remnant stone walls that have been realigned, moved, and destroyed during the area's long history of development, including Ali'i Drive. An Archeological Field Inspection (AFI) of the project site was completed in 2021 by *TesArch*. The AFI concluded that the project site does include rock walls that are likely older than 50 years and therefore must be considered a "historic property" pursuant to Hawaii Revised Statutes (HRS) Ch. 6E-2. However, the observed walls lack integrity as the stones have been recycled for other purposes or moved to accommodate development on adjacent lots. The walls are disassociated from their original context and function, and do not represent an important Ahupua'a boundary and appear to be the cumulative result of multiple construction projects such as the development of Ali'i Drive and defining modern property boundaries. No other structural features were associated within these walls, nor was any evidence or additional historic artifacts found. The only valued cultural resource located

near the subject parcel is the public shoreline access trail that will remain open and free of encroachments from the proposed development. SHPD has provided, by letter, a determination for the proposed project that “no historic properties will be affected”, thus ending the HRS Ch. 6E-42 historic review process.

Scenic and Open Space Resources:

The proposed project would not adversely affect any public sight lines or scenic resources as Kuakini Highway is over 3,300 feet mauka with extensive development located between the highway and the subject parcel. Additionally, scenic views from Queen Ka’ahumanu Highway will not be impacted as it is located more than 4,400 feet from the subject parcel and the area between the highway and subject parcel is completely developed with single family dwellings and associated development. Scenic views towards the shoreline would not be altered as there is existing development located makai of the proposed project site (i.e., Ala Ka La Condominium) that currently block coastal views.

Coastal Ecosystems and Marine Resources:

The proposed development will integrate the site sewer with the existing County sewer system that runs along Ali’i Drive. Additionally, stormwater and runoff management controls will be implemented to assure no impacts to nearby coastal waters. As the subject property lies over 200 feet from the shoreline and at an elevation of 20-40 feet above sea level, the proposed project will have minimal to no impact on coastal or marine resources (including public access).

Beaches:

There are no beaches on the subject property, however, the property is adjacent to an existing public shoreline access path that allows public use of a small rocky beach.

Coastal Hazards:

The proposed project is planned on a non-shoreline parcel that is bounded on the makai side by an existing condominium and the mauka side by the County owned Ali’i Drive. The subject parcel is entirely within FEMA Flood Zone “X” which is outside the 500-year flood plain. With regards to tsunamis and coastal storms, the closest mauka-

makai road for evacuation during an emergency would be Royal Poinciana to Kupuna Street to Lako Street located about ¼-mile south of the subject parcel.

In review of the SMA guidelines as listed under HRS 205A-26(2) (C) above, the proposed development is consistent with the County General Plan, the Zoning Code and the Kona Community Development Plan. The property is zoned Multiple-Family Residential 1,500 square feet (RM-1.5) which provides for medium and high-density residential use in areas with full community facilities and services. A six (6) unit condominium project would be consistent with the current zoning designation and will result in an intensity of land that is no higher than what is permitted by the existing RM-1.5 zoning. Staff notes that the proposed condominium development will require Plan Approval, and as such the plans may need to be modified to meet the Zoning Code requirements such as, but not limited to, on-site parking, landscaping, property line setbacks, minimum height of the structure, drainage, and access to Ali'i Drive from the project parcel.

The proposed project conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Medium Density Urban (mdu). This type of designation includes village and neighborhood commercial and single-family and multiple-family residential and related functions, up to 35-units per acre. Based on the current zoning and size of the parcel (0.2281 acres), up to six (6) units may be constructed on the subject parcel. The proposed development will complement the goals, policies and standards of the Land Use and Housing (Multiple Residential) elements of the General Plan. The proposed condominium will add to the housing inventory for the district, and the project will be in conformance with the character of the surrounding neighborhood which is developed with condominiums and large residential dwellings.

The Kona Community Development Plan (KCDP) was developed and adopted by the County Council on September 25, 2008 as Ordinance No. 08 131, as amended by Ordinance 19 091, effective September 18, 2019. With regards to the KCDP, the subject parcel is located within the Kona Urban Area as defined by the Kona Land Use Map.

The Kona CDP has goals, objectives, and policies relevant to housing through its Land Use section that specifically designate that *“most of the future growth in Kona will*

be directed to an "Urban Area" (UA) as defined in the Kona Land Use Map". It further states that "growth would be directed to compact villages located along proposed transit routes or to infill areas within, or adjacent to, existing development". A similar objective of the KCDP aims to identify areas where higher intensity growth areas should occur and areas where the rural character and open space along the shoreline should be preserved. As this project is within the Kona Urban Area and is providing six (6) residential dwellings adjacent to a developed subdivision and the fully developed Ala Ka La condominium makai of the project site, the requested use would not be contrary to the goals of the Kona CDP.

This project appears to be consistent with the policies of existing recreation with the continued use of the public shoreline access and wastewater, as the proposed development will be connected to the County wastewater system such that no individual wastewater system will be required.

The proposed development will not have a significant adverse impact to traditional and customary Hawaiian rights: 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. These 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: The applicant stated it is not known whether the subject or immediate surrounding area was ever used for the gathering of plants by native Hawaiians. Based on the long history of disturbance and development impacts from surrounding projects (i.e., Ali'i Drive) it would appear unlikely that the site would serve such purpose. An Archeological Field Inspection (AFI) report was completed for the subject parcel which found no evidence of historic or cultural resources requiring preservation. This determination was confirmed by the SHPD by letter, stating "no historic properties will be affected" by the proposed project.

The valuable cultural, historical, and natural resources found in the permit area: The primary valuable cultural and natural resource in this area is the coastal area, and the public shoreline access trail that is adjacent to the subject parcel. The existing access trail

will remain in its current state during all construction activities and the continued use of the subject parcel. Additionally, as overgrowth routinely encroaches into the access from the subject parcel, the development would enable the landowner to maintain the property and keep that area clear of any impediments. To that end the applicant supports the continued use of the public shoreline access and understands it is a valuable resource for Kona communities.

Possible adverse effect or impairment of valued resources: The condominium development will require site grading and grubbing, and construction of various improvements such as the condominium building, parking areas, landscaping improvements, and a pool for residents. The main valued resource in this area is the public shoreline access, which will remain open and free of encroachments during all construction activities and future use of the property.

Feasible actions to protect native Hawaiian rights: The natural and cultural resources related to traditional and customary cultural practices are easily accessible from the public shoreline access trail adjacent to the subject parcel. The proposed project will only aim to help maintain that access and use. The quality of the shoreline area and public access will be protected by project design considerations that include drainage controls for stormwater runoff and the connection of the site's wastewater to the County wastewater system.

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, it is determined that the proposed development will not have any 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 of the condominium shall be conducted in a manner that is substantially representative of plans and details as contained within the Special Management Area Use Permit application received December 30, 2020, all supplemental material, 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. 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.
5. Prior to the issuance of a water commitment by the Department of Water Supply (DWS), 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 DWS. A water commitment deposit shall be paid to the DWS

within 180 days from the approval of this permit in accordance with Rule 5 of the Department of Water Supply's Rules and Regulations. The Applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.

6. The Applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
7. The Applicant shall comply with Chapter 27 - Flood Control, of the Hawai'i County Code.
8. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
9. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights 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), Hawaii Revised Statutes.
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. 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.
12. The Applicant shall maintain the existing drainage pattern for Ali'i Drive and

stormwater runoff shall not be concentrated or diverted to adjacent properties by the placement of a wall or other improvements fronting Ali'i Drive.

13. The property shall connect to the public sewer in accordance with Section 21-5 of the Hawai'i County Code prior to issuance of a Certificate of Occupancy.
14. No vehicular security gate shall be installed or swing within 25 feet of the Ali'i Drive right-of-way.
15. All driveway connections to Ali'i Drive shall conform to Chapter 22, County Streets, of the Hawai'i County Code. Sight distance shall meet applicable recommendations of the Hawai'i Statewide Uniform Design Manual and/or the AASHTO Policy on Geometric Design of Highways and Streets.
16. In the unlikely 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 an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
17. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed project.
18. 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).

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.

19. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.