

COUNTY OF HAWAII PLANNING DEPARTMENT
RECOMMENDATION

SCOTT AND REBECCA MCINTYRE
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2024-000049)

Upon careful review of the applicants' request against the guidelines for granting of a Special Management Area Use Permit, the Planning Director recommends **that this request to construct a one-story, 2,204 square foot single-family residence and related improvements on a 2.56-acre shoreline parcel within 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/or alter this recommendation based upon additional information presented at the public hearing. This approval recommendation is based on the following:

The applicants seek an SMA Use Permit to construct a single-family residence containing three (3) bedrooms, three (3) bathrooms and a garage. The dwelling will consist of 2,204 square feet of living space and 1,600 square feet of accessory area (i.e. lanai, garage and walkways) for a total combined area of 3,804 square feet. Accessory improvements will include an Individual Wastewater System, a 6-foot-high rock wall along the front property line, a driveway, and an entry gate. In order to minimize ground disturbance, the dwelling has been designed with the natural topography of the building site in mind, resulting in portions of the dwelling being elevated from the ground; staff notes that space below the dwelling will be used as storage. Water will be provided via an existing county water line, and wastewater will be managed by the development of a State Department of Health (DOH) approved Individual Wastewater System (IWS). The proposed dwelling will utilize electricity supplied to the site by HELCO.

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 will have negligible impacts on the area and vicinity, and impacts would be limited to the direct physical impacts of the construction of the single-family dwelling. This construction would have negligible or no impact on coastal ecosystems due to the location of the proposed project being more than 200-feet from the shoreline. Adverse impacts to water quality would not be expected due to both the large, vegetated area located makai of the proposed construction and minimal impervious areas created by construction.

The proposed single-family residence and related development would not represent development of coastal areas, as it is considered a permitted use within the Urban District and will not alter or impact coastal resources due to its distance from the shoreline and lack of viable public access to the shoreline. The property was used for over a century for sugarcane agriculture, and no native vegetation is present as the land has been altered by previous land disturbance for agriculture. No rare species or forest resources would be affected by the proposed project as none were observed. The proposed dwelling on this parcel would have no adverse effect on natural beauty and scenic view planes since it is low profile, and topography aids to hide the proposed project from the highway. Historic properties located on the subject parcel (Japanese Cemetery) will require a preservation strategy to be determined after the applicants completed the request Archaeological Inventory Survey (AIS) of the project site and the AIS is accepted and reviewed by SHPD.

In preparation for the proposed development, the applicants conducted an *Archeological Due Diligence* (survey) to conduct an assessment of the current archaeological conditions that exists on the subject parcel and to identify historic preservation concerns related to the proposed project. According to SHPD, an AIS is required prior to development and has been added as a condition of this approval that no development or work will occur without first getting approval from SHPD on a submitted AIS.

The applicants have proposed to exceed the minimum 40-foot shoreline setback by locating construction to more than 200 feet from the top of pali (shoreline) and as such the proposed development would not affect any coastal resources nor adversely affect

public use or recreation in this area as it is limited by topography.

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 construct a single-family dwelling and related improvements on 2.56-acres of land will not have a significant adverse environmental or ecological effect upon the Special Management Area. This determination is based on the following:

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 development of a single-family dwelling 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 support public coastal recreational opportunities by not interfering with or impeding any public shoreline access. The proposed dwelling will be sited over 200 feet from the makai boundary of the parcel, which terminates at an approximately 120-foot high pali and is separated from the ocean by a narrow strip of land at the base of the pali. The nearest shoreline public access way is the Laupāhoehoe Point Beach Park approximately 1.5 miles northwest of the subject site. Thus, the

shoreline is not accessible from the subject property and the project will not interfere with any coastal recreational opportunities.

Historic Resources:

Based on the history of development and use, the area of development proposed shows no evidence of historic properties other than the existing Japanese Cemetery which will require preservation according to SHPD. It is noted that the 26,105 square foot cemetery easement with access from Hula'ana Place exists on the property. The easement contains an early to middle 20th century Japanese cemetery which has been documented with SHPD. No development is proposed within the cemetery easement and thus the proposed development will not affect the cemetery. Access to the cemetery will be preserved via an unlocked gate. The subject property is not used for gathering, ceremonial, or other cultural purposes by Native Hawaiians therefore there appears to be no potential for cultural impact to culturally valued resources or cultural practices.

Scenic and Open Space Resources:

The proposed project will not have a significant impact on the area's scenic and open space resources. The dwelling is proposed to be only 17 feet in height and thus coastal view planes will be preserved. Additionally, any potential visual impacts will be further reduced based on the location of the proposed improvements being more than 200-feet from the top of pali (shoreline) and the gentle downward sloping topography of the area in a mauka to makai direction. Furthermore, the dwelling should not be visible from the highway due to the existing vegetation along the highway. Therefore, visual impacts regarding the coastline will not significantly change from the current state.

Coastal Ecosystems and Marine Resources:

The subject property abuts the shoreline; however, the distance of the proposed development and the conditions of construction permits will minimize potential impacts to coastal resources such as soil erosion. During the issuance of the Final Subdivision Approval, the applicants provided necessary drainage improvements to control all development related runoff. 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.

Coastal Hazards:

The property is located within Flood Zone X, outside of the 500-year flood area, and is not located within the tsunami inundation zone. The parcel is also outside of the 3.2-foot sea level rise exposure area, and all development will be sited at least 200-feet from the shoreline. Additionally, there is an existing drainage easement that encompasses the Kihialani Gulch which is located on the subject property along the northern property boundary. The proposed development will be sited over 200-feet from the gulch and shoreline (top of pali).

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, Hāmākua Community Development Plan (HCDP), 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 map designations for the subject property are low density urban (ldu), medium density urban (mdu) and Open (ope); all of which allows for this type of development. The Hāmākua Community Development Plan (HCDP) was developed under the framework of the February 2005 County of Hawai‘i General Plan and was adopted in 2018 via Ordinance 2018-78 by the Hawai‘i County Planning Commission. The proposed development is consistent with the General Plan LUPAG Map designation as it will complement the goals, policies, and standards of the 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 residents and indirectly affect the economy through construction industry purchases from local suppliers.

The proposed project would be compatible with the surrounding area, and is consistent with the LUPAG designation, the zoning, and State Land Use District. The

project would fulfill the following pertinent objectives and policies of the Hāmākua Community Development Plan:

- 1) *Objective 5* – Direct future settlement patterns that are sustainable and connected.
- 2) *Objective 8* – Promote, preserve, and enhance a diverse, sustainable, local economy.
- 3) *Objective 9* – Encourage the increase and diversity of employment and living options for residents that complement Hāmākua’s ecology, rural character, and cultural heritage.
- 4) *Policy 1* – Future land use decisions in the Hāmākua CDP planning area shall be consistent with the Land Use Guide Map.
- 5) *Policy 17* – Development in the SMA, including subdivision, shall only be approved if it is first found that it will not have any substantial adverse environmental or ecological effect.

The proposed single-family residence will be located within an area identified by both the General Plan and the HCDP Land Use Guide Maps as Low Density Urban and thus, the subject site is appropriate for the proposed development and would be consistent with surrounding land uses. In summary, the proposed project would be consistent with pertinent goals and policies of the Hawai‘i County General Plan and the Hāmākua Community Development Plan (HCDP). While the HCDP does not list specific land uses for the subject parcel, the proposed residence does align with certain priorities of the natural and cultural resources, and community infrastructure sections, such as: protecting coastal areas from development, protecting, and preserving coastal view planes, preserving historic resources, ensuring appropriate public access is retained or bolstered, and concentrating future development in an existing subdivision.

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: The applicants submitted the project details and development application to the SHPD for their HRS Ch. 6E-42 review and concurrence. SHPD has responded that an Archaeological Inventory Survey (AIS) must be completed prior to initiating development on the parcel. The applicants did conduct an archaeological due diligence survey as part of the application review process, and to determine the steps required to complete the SHPD HRS Ch. 6E-42 historic preservation review.

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

Archaeological resources are highly unlikely to exist on the subject property, which has been used for sugar cultivation purposes for many years that completely impacted the property. However, there is an existing Japanese Cemetery located on the parcel which has an existing preservation easement. Natural resources in the area are the gulch which has been noted to be significant, but the shoreline is not accessible in this area due to the steep cliff and lack of safe access paths.

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.

Possible adverse effects or impairment of valued resources: The existing vegetation may be destroyed by ground alteration, however, there is no evidence that the flora in the project area is particularly desired or used for cultural practices. The SHPD has required that the applicants complete an Archaeological Inventory Survey (AIS) of the subject parcel to determine the extent of resources related to the existing cemetery and to establish preservation tactics to minimize impacts to this resource. Other uses in the area, such as fishing, will not be impacted as there is no existing safe access along or through the site to the ocean.

Feasible actions to protect native Hawaiian rights: The proposed development will not restrict access to, and the use of the existing Japanese cemetery located on the subject parcel. Access to the cemetery will be provided via a gate that will remain open at all times. Conditions of approval have been added to protect endangered, threatened, and

indigenous birds such as the Newell's shearwater and the Hawaiian Petrel with regards to lighting. A condition of approval has also been added to require that the applicants complete an Archeological Inventory Survey (AIS) for the subject parcel, and they AIS is approved by SHPD prior to development in order to protect any identified cultural, historical, and natural resource(s) in the area. 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 applicants remain 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 applicants, its successor(s), or assign(s) shall be responsible for complying with all stated conditions of approval.
2. The applicants shall secure all necessary approvals and permits from other affected Federal, State, and County agencies as necessary to comply with all applicable laws and regulations.
3. Other than the proposed project as described in this permit, no further work is permitted under this approval.
4. Construction of the 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 Application dated January 25, 2024, and representations made to the Windward Planning Commission.

5. The applicants shall complete an Archeological Inventory Survey (AIS) to be submitted to the State Historic Preservation Division (SHPD) for review and approval prior to any activities on the subject parcel. The applicants shall ensure that any recommendations submitted by SHPD for preservation shall be in place prior to development.
6. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit.
7. 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.
8. The applicants shall comply with Chapter 27 - Flood Control, 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. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
11. No land alteration, grubbing, landscaping or construction activities, including but not limited to, the stockpiling of debris, construction materials or equipment, shall occur in the shoreline setback area, the drainage easement, or the Archaeological easement without securing a prior written determination from the Planning Commission.
12. The applicants shall ensure that excessive siltation and turbidity are contained or otherwise minimized through the use of silt containment devices or barriers, or other approved Best Management Practices to minimize impacts to the nearshore and riverine areas.
13. 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.

14. 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 applicants 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.
15. 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 applicants, 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. 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 applicants should require an additional extension of time, the Planning Department shall submit the applicants' request to the Planning Commission for appropriate action.
16. That in issuing this permit, the Department has relied on the information and data that the applicants have provided in connection with this permit. If, subsequent to this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings.

17. 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.