

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

NIEL JAYASINGHE
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2024-000060)

Upon careful review of the applicant's request against the guidelines for granting of a Special Management Area Use Permit, the Planning Director recommends **that this request to construct a four-story, 41,600 square foot apartment building containing seventeen (17) rental units and related improvements in a 0.445-acre parcel within the Special Management Area (SMA). 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 applicant requests a Special Management Area Use Permit to develop an apartment building with four (4) stories and two (2) parallel north-south wings, ground level parking, and a rooftop terrace. The ground floor is proposed to be 11,360 square feet and contain a total of twenty-two (22) parking stalls, including two (2) ADA-accessible stalls. A water service room, an electrical room, and a trash disposal area are also proposed on this floor. The first and second floors are proposed to contain a total of twelve (12) rental units (six per floor). Each of these units would be approximately 1,000 square feet in area and consist of two (2) bedrooms and two (2) full bathrooms. The floor plans also include a kitchen, dining and living room, and a balcony. The third floor is proposed with a combination of four (4) 2-bedroom and 2-bathroom units and one (1) 3-bedroom, 3-bathroom unit of approximately 2,000 square feet in area. The 3- bedroom unit features one larger suite bedroom, a vestibule, a larger living area, and balcony. The total number of proposed rental units in the building is seventeen (17). In addition, the project proposes an 8,170 square foot rooftop terrace for resident use. One (1) elevator and two (2) stairways are proposed for access to all floors

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. While the subject parcel is located within the Special Management Area, no work is proposed within the shoreline setback area. Additionally, no work is proposed within the any State or County Right-of-Way (ROW) and as such no HRS 205A trigger was identified.

The proposed project will be developed in accordance with construction Best Management Practices to minimize adverse impacts to air pollution, sedimentation, and erosion, control stormwater runoff, and wastewater management. The proposed development will integrate with the County sewer system and will control potential stormwater runoff through the construction of two (2) drywells. No anchialine ponds exist on site and none in the nearby area will be impacted by the project.

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: The subject property is not a shoreline parcel. It is located roughly 0.2 miles inland from the nearest coastline to the north and west. Several ocean access points are available to the public in the area. The closest of which are Onekahakaha Beach Park, located 0.2 miles to the north, and Keaukaha Beach Park located 0.3 miles to the west. In addition, Kaloha, Carlsmith, Lelewi, and Richardson's

Beach Parks are all located between 0.5 and 2 miles to the east of the site. The proposed project will not impact any of these shoreline access points.

Historic and Cultural Resources: Although no commissioned archaeological survey of the site was conducted it is highly unlikely that any historic sites would be found on the property since it was previously cleared and graded and is currently maintained grass. However, in the event any archaeological or historical features are found during any earth disturbance activity, work will stop within the affected area and appropriate clearances from the State Historic Preservation Division (SHPD) and County Planning Department will be secured before work resumes.

Scenic and Open Space Resources: The proposed project will not have a significant impact on the area's coastal scenic and open space resources. Ocean views are not expected to change substantially from Kalaniana'ole Street since the ocean is already obstructed by existing vegetation on the makai side of Apapane Road. Nevertheless, the building design incorporates an open view through the ground parking area, which will maintain some line of sight toward the ocean. Onekahakaha Beach Park is a listed scenic and open space resource in the Hawai'i County General Plan. Vehicular access to the park is located 350 feet to the north and the shoreline roughly 0.2 miles to the north from the subject property. Access to this area will not be impacted.

Coastal Ecosystems, Marine Resources, Beaches: The proposed project will be developed in accordance with construction Best Management Practices to minimize adverse impacts to air pollution, sedimentation, and erosion, control stormwater runoff, and wastewater management. The proposed development will integrate with the County sewer system and will control potential stormwater runoff through the construction of two drywells. Relative to coastal ecosystems, there should be little, if any, adverse impacts due to the project distance from the shoreline, and nearby Beach Park. By utilizing a previously disturbed site, potential adverse impacts to natural landscapes and ecosystems on alternative locations are avoided.

Coastal Hazards: The subject property lies roughly five (5) feet above sea level. The site lies within the Tsunami Evacuation Zone. A civil defense siren is located 0.3 miles to the east at the intersection of Kalaniana'ole and Kamokuna Street. An

emergency preparedness and response plan can be prepared for the proposed development if required. There are no known hazards on site relating to stream flooding, erosion, subsidence, or pollution.

The proposed development is consistent with the County General Plan, Hilo 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 proposed development is consistent with the General Plan LUPAG Map designation of Resort (res) which includes *Resort developments that are intended to satisfy the needs and desires of both visitors and residents. Such areas have basic amenities and attributes that support visitor accommodations and related facilities.* The proposed apartment building will meet a critical need for affordable workforce housing in Hilo. The site is located proximate to similar existing uses and essential services; therefore, the project will also add increased economic potential to surrounding businesses. The request will have a positive impact on long-term economic opportunities including landscaping, building maintenance, and property management services for the rental units. Furthermore, this development will meet the economic needs of the community and improve quality of life, while keeping in balance with the physical, social, and cultural environments of the island.

The project site is located within an area adequately served with essential services such as water, electricity, and telephone. A connection to county sewer will provide wastewater service.

The Federal Emergency Management Agency (FEMA) Flood Insurance Rate map (FIRM) identifies the parcel as Flood Zone VE, which is within the 100- year coastal flood range, or 1% chance of occurring in any given year, with velocity hazard (wave action). The proposed development will meet the standards of this flood zone, which require the first floors to be elevated above the base flood elevation of 11 feet. Flood proofing will be used for any structures or uses below this elevation.

The proposed project also fulfills the housing goals by providing seventeen (17) rental affordable and workforce units for the residents of the County in proximity to employment centers. The proposed apartment would notably contribute to the growth needs of the area. Specifically, the project would meet the criteria to increase rental opportunities and choices in terms of quality, cost, amenity, style, and size of housing, especially for low- and moderate-income households. The affordable unit breakdown and rental prices were calculated using Hawai'i County Area Median Income (AMI) for 2023. Under these guidelines, the applicant proposes three (3) 2-bedroom units at \$2,250/month (under 100% AMI), six (6) 2-bedroom units at \$2,500/month (under 120% AMI), seven (7) 2-bedroom units at \$3,000/month (under 140% AMI), and one (1) 3-bedroom unit at \$3,500/month (under 140% AMI). These rates include allowances for utilities per HUD-52667.

Given the above, the project specifically fulfills the following pertinent land use goals, policies, and standards of the General Plan:

- *Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.*
- *Promote and encourage the rehabilitation and use of urban areas that are serviced by basic community facilities and utilities.*
- *Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.*
- *Encourage urban development within existing zoned areas already served by basic infrastructure, or close to such areas, instead of scattered development.*

Since the adoption of the HCDP, there have been significant land developments in the City of Hilo, including the shopping complexes in and around the Puainako/Kanoelehua Intersection, expanded commercial uses near the University complexes, and commercial/industrial uses along the southern portion of the Waiākea Houselots area. Although the document was reviewed by the County Council, the HCDP was never adopted by ordinance. When the HCDP was drafted, its Land Use Pattern Allocation Guide (LUPAG) Map identified the subject area as Resort. This is consistent with the 2005 County General Plan LUPAG designation. The proposed project is

therefore consistent with both the General Plan and the Hilo Community Development Plan LUPAG map and policies.

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: No formal site study was conducted in relation to valued cultural resources on the subject parcel. However, the staff notes that this property has undergone ground disturbance (grading) and clearing of the parcel in the past such that no features are expected to be found. Additionally, the entire parcel is cleared on major vegetation other than maintained grass.

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

The primary resource in the immediate area is the Onekahakaha Beach Park which is located approximately 0.2 miles from the project site. The subject parcel is approximately 0.2 miles inland from the coastline located to the north and west. A small ocean inlet is present on State land north of the subject property and terminates roughly 200 feet north of the site. As such, the gathering of marine life and coastal access is not anticipated to be affected by the proposed project, nor is access to the Beach Park via Onekahakaha Street.

Possible adverse effects or impairment of valued resources: It is not known whether the subject or immediate surrounding area was used in the recent past for the gathering of plants by Native Hawaiians. The applicant has not observed any Native Hawaiians gathering plants on the site or the adjoining properties, and the site is primarily cleared of major vegetation other than maintained grass. Cultural resources in this area relate to the coastal uses, which this project will not impact.

Feasible actions to protect native Hawaiian rights: The proposed development will not restrict access to, and the use of natural resources at the Park and to ensure preservation, 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 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. Prior to the issuance of a water commitment by the Department of Water Supply (DWS), the applicant(s) 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.

4. Construction and operation of the apartment building 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 May 24, 2024, and representations made to the Windward Planning Commission.
5. 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.
6. 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.
7. 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.
8. All driveway connections to Kalaniana‘ole Street and Apapane Street shall conform to Chapter 22, County Streets, of the Hawai‘i County Code.
9. The applicant shall comply with Chapter 27 - Flood Control, of the Hawai‘i County Code.
10. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai‘i County Code.
11. The applicant shall not, at any time, impede or otherwise restrict public access to the shoreline at Onekahakaha Beach Park or other shoreline areas in the vicinity of the subject parcel.

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. All exterior lighting and lamp posts associated with the proposed residential development shall be cut-off luminaries to provide the necessary shielding to mitigate potential light pollution in the coastal areas and lessen possible seabird strikes. No artificial light, except as provided in Hawai‘i Revised Statutes §§ 205A-30.5(b) and 205A-71(b), shall be directed to travel across the property boundaries toward the shoreline and ocean. 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, 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 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.
16. 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.