

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

SANDMAN PROPERTIES LLC
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2024-000061)

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 one (1) story, 4,700 square foot single-family residence and related improvements on a 3.3550-acre shoreline parcel within the Special Management Area (SMA) **be approved by the Windward 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 construct a new, one-story single-family residence with 4,700 square feet of interior space, and 770 square feet of accessory space on a 3.550-acre parcel of land located on the makai (seaward) side of Hawai‘i Belt Road within the Special Management Area (SMA) on the Island of Hawai‘i. The proposed one-story home will have a total of 5,470 sf of living space, with five (5) bedrooms, five and a half (5.5) baths, and a covered lanai. The home will be powered by the existing electric service, and, according to the applicant, potable water provided by County of Hawai‘i Department of Water Supply. The proposed project will require a Department of Health (DOH) approved individual wastewater system to be installed on the makai side of the subject parcel; this will also be more than 200 feet from the shoreline.

The grounds for approving development within the Special Management Area are based on HRS, Chapter 205A-26(2) (Special Management Area guidelines) and Rule 9-11(e) of the Planning Commission Rules of Practice and Procedure. Planning Commission Rule 9-11(e) states that the Planning Commission may permit the proposed development only upon finding that:

1. The development will not have any significant adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest.
2. The development is consistent with the Special Management Area objectives, policies and guidelines as provided by Chapter 205A, HRS.
3. The development is consistent with the General Plan, Community Plan, Zoning Code, and other applicable ordinances.
4. The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
 - a. The identity and scope of valued cultural historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area.
 - b. The extent to which those resources including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - c. The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical, or natural resources including any existing traditional and customary native Hawai'i rights.

In review of the SMA guidelines as listed under HRS 205A-26(2)(A), the proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action on the Special Management Area. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and eliminate planning options.

The proposed single-family residence is within an established residential-agricultural development/subdivision that was created on January 7, 2000, by Subdivision No. 6368. Many of the shoreline parcels in the area are fully developed with single-family residences, related development, and landscaping. The Applicant has designed the proposed single-family residence to be 101-feet from the certified shoreline, which is greater than the required 40-foot shoreline setback boundary. The top of the pali acts as the shoreline barrier as well as the boundary line between the state Agricultural and Conservation areas. The nearest shoreline public access is located approximately 5 miles north of the subject parcel at Laupahoehoe Beach Park and thus will not be impacted by the proposed project. Based on the above factors the proposed project will not significantly alter or impact coastal resources nor impact access to and along the shoreline.

The subject parcel has been largely undeveloped within an established residential-agricultural community. Two (2) accessory farm structures exist on the subject property, both of which were granted approval via a Special Management Area Minor (SMM) permit. However, one of the structures did not receive a permit from the Department of Public Works Building Division. As a condition of approval, the applicant is required to obtain a building permit for the unpermitted structure prior to or concurrently with the single-family residence. The other, as-built, permitted, accessory farm structure has a portion that lies within the 30-foot setback. A second condition of approval will be added requiring the applicant to obtain a setback variance to bring the structure into compliance. While no recent development has occurred on a majority of the parcel, the land was altered considerably from historic sugarcane cultivation. The property is vegetated primarily with non-native plant species and therefore, it is not anticipated any rare or endangered floral or faunal species would be found on the parcel, nor would any be affected by the proposed project. A home on this property will have no adverse effect on natural beauty and scenic view planes since it matches the existing residential development located throughout the community. Based on the small size and characteristics of the subject parcel and the historic sugarcane cultivation on the property, it is not anticipated than any historic properties will be affected. Further, due to nature of the Hāmākua coast, public access to the shoreline is limited, thus there is no anticipated

change to the shoreline/fishing access or cultural practices that take place along the County of Hawai'i's coastlines.

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 new single-family residence and related development on a 3.355-acre parcel of land will not have a significant adverse environmental or ecological effect upon the Special Management Area.

In review of the SMA guidelines as listed under HRS 205A-26, the proposed development is consistent with the objectives and policies as provided by Chapter 205A-26, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.

The purpose of Chapter 205A-26, Hawai'i Revised Statutes (HRS) and Rule 9 of the Planning Commission Rules of Practice and Procedure, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options. The objectives and policies of Chapter 205A-26, HRS and Rule 9-10(h) include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas.

The proposed construction of a new single-family residence and related improvements is consistent with the objectives and policies of the Coastal Zone Management Program (Chapter 205A, Hawai'i Revised Statutes) including:

Recreational Resources:

The house site is designed outside of the shoreline setback area and will not restrict any current shoreline recreation or activities. However, due to the nature of the Hāmākua Coast, coastal access is limited within the immediate area of the proposed project. The nearest public access to the shoreline is located 5 miles north of the subject property at Laupāhoehoe Beach Park. View planes towards the shoreline will not be adversely impacted, as coastal views from Hawai'i Belt Road are blocked by a road cut and vegetation.

Historic Resources:

The subject parcel is within an-established residential community with similar single-family residences and related developments including non-native coastal landscaping. The applicant has stated no valuable cultural resources and practices have been known to occur on the parcel. Additionally, there would be no historic resources, such as the shoreline, that would be adversely affected by the proposed project.

Scenic and Open Space Resources:

The proposed project site is not visible from the vantage point of any public highway due to a road cut on Hawai'i Belt Road directly west of the subject property. The proposed project will not impact scenic or open space resources, and the use of a single-family residence is consistent with the other homes along this section of shoreline. The proposed project will not affect public access and will not adversely affect any sightlines or scenic resources in any way.

Coastal Ecosystems and Marine Resources:

The subject property abuts the shoreline; however, the design of the proposed residence and the conditions of construction permits will minimize potential impacts to coastal resources such as soil erosion. All mandated setbacks and government regulations related to runoff and nearshore waters will be adhered to including the placement of Best Management Practices (BMPs) such as silt fencing and other erosion control measures. No threatened or endangered animal or plant species are known to be 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 contains non-native vegetation including common grasses, palms, ti, crotons and bananas and no native or endemic species are known or have been observed. The property is predominantly within Flood Zone X. As such, the proposed structure will not be affected. The proposed home will be engineered to withstand wind and water loads and will not be subject to flooding since the dwelling will be built according to flood zone regulations and will be outside the 40-foot shoreline setback.

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 comprehensive updated plan was adopted by ordinance in 2005 and amended in 2006, 2007, 2009, 2012 and 2014. The map designation for the subject property is Important Agricultural Land (ial) and Open (ope). The proposed development is consistent with the surrounding properties which consist primarily of single-family residences found in the area. 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. The residence and associated improvements would be compatible with the existing single-family homes and recreational uses in the area surrounding the subject parcel.

Additionally, the entire property is zoned Agricultural 20-acre (A-20a) by the County of Hawai‘i as is the surrounding properties which are primarily developed with single-family dwellings. These properties range in size from approximately 0.5 to more than 3 acres. The newly proposed dwelling and associated improvements will be designed and constructed in a manner that is in keeping with the neighborhood.

The Director notes the subject property is zoned Agricultural and Conservation by the State of Hawai‘i. As is common along the coast, the shorelines are designated conservation areas, however, the applicant is not proposing development within the conservation area.

Lastly, the proposed development is consistent with the Hāmākua Community Development Plan (HCDP). The HCDP was developed under the framework of the February 2005 County of Hawai‘i General Plan and adopted in 2018. The subject property is located within the Nīnole Community as identified within the HCDP. The requested project aligns with the following policies of the Puna Community Development Plan:

Managing the effect of growth and development: The proposed project to construct a new single-family residence is in keeping with development in surrounding

area. The proposed project will not result in any change to the area's character nor increase density and will be built in accordance with current county building codes.

Natural Resources and Shoreline: The proposed project will protect and preserve the quality of areas endowed with natural beauty, including the quality of coastal scenic resources as the project will be developed with restraint to coastal impacts. The applicant supports a conservative approach to the conservation of the shoreline by placing the proposed home more than 100-feet from the top of pali. Thus, the project will not impact or alter the shoreline. Additionally, the proposed project will not include any development within the shoreline setback area and will utilize Best Management practices during construction to minimize any coastal impacts during construction.

The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist. In view of the Hawai'i State Supreme Court's "PASH" and "Ka Pa'akai O Ka'Aina" decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: Based on the development history of the subject parcel which includes sugarcane cultivation, it is highly unlikely that any historic sites would be found on the property. In conformance with review criteria the project was submitted to the State Historic Preservation Division (SHPD) for an HRS, Ch. 6E-42 review, however, no response has been received from SHPD at this point in time. This is typical when SHPD agrees that the proposed project will not have any impacts or effects on any valued resources in the area or for areas where extensive land disturbance has occurred.

The valuable cultural, historical, and natural resources found in the area: The applicant notes the subject property is located approximately 5 miles to an established shoreline access trail and no changes to access or use are proposed nor anticipated. Further, it is not known whether the subject site or immediately surrounding area was ever used for the gathering of plants by native Hawaiians. Given the residential development of the area, it would appear unlikely the site would serve such purpose

today or in the recent past. Thus, the project does not appear to present any cultural impacts.

Possible adverse effects or impairment of valued resources: No floral or faunal species listed as threatened, endangered, or proposed for listing under the federal or state endangered species statutes were identified on the site. Additionally, no species used for cultural gathering purposes were identified within the project area. The residential nature of the surrounding areas would make it less likely to find other protected or endangered animal life in this area. All construction activities will follow Best Management Practices to minimize adverse point and non-point pollution to coastal resources and surrounding areas.

Feasible actions to protect native Hawaiian rights: A public pedestrian access route to the shoreline runs through the County owned parcel located 5 miles north of the subject property. According to the County's Shoreline Access website, there is no established shoreline public access in the area and no public access is possible on the subject property. The applicant states it is unknown, and unlikely due to the nature of the Hāmākua coast that recreational use has occurred in the area. Thus, public shoreline access will not be affected by the proposed project.

Lastly, this recommendation for approval is made with the understanding that the applicant remains responsible for complying with all other applicable government requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, the proposed development will not have substantial adverse impacts on the environment, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the

Planning Commission relating to the Special Management Area. Approval of this request is subject to the following conditions:

- 1) The applicant(s), its successor(s), or assign(s) (“Applicant”) shall be responsible for complying with all stated conditions of approval.
- 2) The Applicant shall secure all necessary approvals and permits from other affected Federal, State, and County agencies as necessary to comply with all applicable laws and regulations.
- 3) Construction of the new single-family residence and related improvements shall be conducted in a manner that is substantially representative of plans and details as contained within the SMA Permit application dated January 16, 2024, and representations made to the Windward Planning Commission.
- 4) Construction of the proposed development shall be completed within five (5) years from the effective date of this permit, including, but not limited to approvals or other requirements as deemed necessary by the Hawai‘i County Department of Water Supply (DWS).
- 5) The Applicant shall obtain an “as-built” building permit for the unpermitted agricultural warehouse as outlined in Condition No. 3 of PL-SMM-2021-000006. The building permit must be issued prior to or in concurrence with the issuance of building permits for the proposed structure.
- 6) The Applicant shall obtain a front-yard setback variance to bring the existing, as built, agricultural warehouse into compliance prior to the issuance of a building permit for the new development.
- 7) The Applicant will adhere to any recommendations or requests made by the State Historic Preservation Division (SHPD) when the HRS Ch. 6E-42 review is completed.
- 8) 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.
- 9) All construction and maintenance activities 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) All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- 12) The method of sewage disposal shall meet with the requirements of the Department of Health.
- 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) The Applicant shall install a silt fence barrier along the entire length of the 40-foot shoreline setback area to ensure that no work, or impacts affect the shoreline setback area. The barrier will remain in place until all construction activities are completed.
- 15) 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 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.
- 16) An initial extension of time for the performance of conditions within this permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the Applicant and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.

- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
 - 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.
- 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.