

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION REPORT

KAIMU COVE LLC
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2024-000063)

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 create a 5-lot subdivision for future residential development and related improvements all within a 3.677-acre shoreline parcel in 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 proposed development outlined in the application is for a 5-lot subdivision on a 3.677-acre shoreline parcel within the Special Management Area (SMA). Each lot is intended for the construction of a single-family dwelling, along with related facilities such as driveways, wastewater systems, and utility installations. The development aims to provide housing opportunities in an area zoned for residential-agricultural use.

- **Lot size:** The proposed development involves subdividing a 3.677-acre property into five lots, with each lot having a minimum size of half an acre (each lot will cover at least 21,780 square feet), with four of the lots fronting the shoreline and accommodating the required 40-foot shoreline setback.
- **Building height:** Each dwelling will not exceed 35 feet in height and will adhere to yard setback requirements (25 feet front and rear, 15 feet side).
- **Utilities:** Water will be supplied via lateral connections from the existing water main. Wastewater will be handled by individual septic systems approved by the State Department of Health. Other utilities, including electrical, cable, and telephone services, will be available to each lot.

- Additional improvements: The project includes grubbing, grading, access driveways, pedestrian shoreline access pathway, water meter installations, and electrical poles.

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. The proposed Kaimu Cove project includes adherence to necessary environmental assessments and regulations to ensure minimal ecological disruption. The project will comply with the guidelines set by the Hawai'i Coastal Zone Management Program and will obtain the required Special Management Area (SMA) Use Permit, ensuring that coastal and environmental resources are protected throughout the development process. The project design incorporates multiple mitigation strategies to minimize potential adverse effects. A 40-foot shoreline setback will be established, prohibiting any construction or land alteration within this area, which aims to protect coastal ecosystems and maintain natural processes. Additionally, a 5-foot-wide public pedestrian access easement along the northern boundary will enhance public access to coastal resources while helping to protect the sensitive shoreline environment. Each single-family dwelling will utilize individual septic systems designed to meet State Department of Health standards, thereby mitigating pollution risks to nearby water bodies and ecosystems.

The project includes commitments to restore any areas of previous unpermitted disturbance, which involves removing unpermitted grading materials and restoring affected areas to their natural state. Review by local agencies will ensure that restoration efforts meet environmental standards, helping to rehabilitate the land and restore habitats impacted by past activities. During construction, best management practices will be implemented to control dust, erosion, and runoff, including the utilization of sediment barriers and other techniques to prevent soil erosion during and after construction, as well as spraying water on active construction areas to minimize dust emissions. These practices are aimed at limiting any temporary disturbances related to construction activities.

The project site has been assessed for its ecological characteristics, revealing that while the area includes various flora, no endangered or threatened species have been documented directly on the site. The ecological impact is further mitigated by the absence of significant habitats or species that would be adversely affected by the proposed development. Furthermore, past archaeological surveys have confirmed that the site does not contain significant historical or cultural resources that would require additional

protective measures.

The benefits of the proposed project, including the provision of housing opportunities within an established community, align clearly with public interests. The development will assist in fulfilling housing demand in the area and contribute to local economic growth, which outweighs any minimal ecological impacts that may occur. In summary, the Kaimu Cove project has been designed and assessed to ensure that any potential adverse environmental effects are minimized to the extent practicable. The measures in place to protect ecological resources, combined with the project's alignment with public health and safety interests, demonstrate that the benefits of the project clearly outweigh any minor impacts, supporting community well-being and sustainable development in the area.

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 subdivide the subject parcel to create five (5) home sites 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 Kaimu Cove project is consistent with the objectives and policies

outlined in Chapter 205A-26 of the Hawaii Revised Statutes, as well as the Special Management Area (SMA) guidelines contained in Rule No. 9 of the County of Hawaii Planning Commission Rules of Practice and Procedure. Specifically, the project prioritizes the protection and management of coastal resources and ecosystems, aligning with the underlying purpose of maintaining the integrity of Hawaii's unique coastal zones. By establishing a 40-foot shoreline setback, the project effectively safeguards against coastal hazards and preserves natural coastal processes, which is a key requirement under the SMA guidelines. The development also adheres to the principle of sustainable growth by providing much-needed housing options within an established community, thereby respecting the area's character while accommodating population growth. Furthermore, the project includes provisions for public access along the shoreline, enhancing recreational opportunities while ensuring that access does not compromise the sensitive ecological environment. Through these measures, the Kaimu Cove project embodies the intent of the relevant statutes and rules, balancing development needs with environmental stewardship and community well-being.

View planes towards the shoreline will not be adversely impacted as the proposed home sites are not visible from the nearest State highway or other mauka vantage points, and access to the shoreline will be provided through the subject parcel. Staff notes the coastal berm located along the maki side of the subject parcel will also minimize viewplane impacts along the shoreline, and views mauka. The property contains mostly non-native and several common native plants. Standard clearing, and lighting mitigation will be employed to ensure no adverse impacts to any potential threatened or endangered animals that may traverse the property. The property is not situated over any natural drainage system or water feature that would flow into the nearby coastal ecosystem and no floodplains are present in the affected area. In terms of beach protection, construction is set back from the shoreline and would not affect any beaches nor adversely affect public use and recreation of the shoreline in this area. With implementation of Best Management Practices associated with grading permits, there should be no impacts on marine resources. No historic sites would be adversely affected and no effects to cultural resources and practices will occur since the existing cultural use of the shoreline area for

fishing and gathering uses will be maintained and a permanent shoreline access path will be established.

The proposed development is consistent with the County General Plan, Puna Community Development Plan (PCDP), Zoning Code and other applicable ordinances. The proposed Kaimu Cove project demonstrates consistency with the Hawai'i County General Plan, the Puna Community Development Plan (PCDP), the Hawai'i County Zoning Code Chapter 25, and other relevant ordinances for both the County and State of Hawaii. Specifically, the project aligns with the Hawaii County General Plan's emphasis on sustainable development and the provision of adequate housing, as it proposes a 5-lot residential subdivision that addresses local housing needs while ensuring compatibility with the surrounding residential and agricultural context. The PCDP further supports this initiative, as it encourages low-density residential development that respects the rural character of Puna, which the project embodies by offering lots of at least 1/2 acre in size. Additionally, under Hawaii County Zoning Code Chapter 25, the project is categorized within the Residential and Agricultural (RA-.5a) zoning designation, allowing for the proposed uses and ensuring adherence to local land use policies. Furthermore, the project includes proactive measures such as a 40-foot shoreline setback and public access easements, promoting environmental protection and community engagement while also satisfying applicable state and county regulations concerning coastal development.

The project aligns with key themes of the PCDP:

Protecting Natural and Cultural Resources: The project has planned measures such as a 5-foot-wide pedestrian public shoreline access easement and adherence to environmental best management practices, ensuring that existing resources are preserved.

Growth Management: The subdivision aims to provide low-density residential lots that fit within the context of established residential uses in the surrounding area, promoting the rural character of Puna.

Public Safety and Sanitation: The project includes provisions for wastewater management using individual septic systems, complying with health and safety regulations.

The County General Plan aims to maintain a balance of land uses and supports urban development in already designated urban areas. The Kaimu Cove project is situated in an area recognized for residential and agricultural use since the late 1960s. While the General Plan suggests extensive agricultural uses, it also emphasizes the utilization of urban areas for residential purposes where appropriate. Consequently, the proposed subdivision is consistent with the objectives of the County General Plan, facilitating housing opportunities within an established community.

Overall, the Kaimu Cove project fits the zoning of the area, adheres to the County General Plan, and aligns with the objectives and themes outlined in the Puna Community Development Plan. This integration supports sustainable community growth in a manner that is consistent with existing regulations and community values.

Through these specific strategies, the Kaimu Cove project successfully integrates the objectives and policies of the relevant plans and codes, fostering a balanced approach to development that preserves the integrity of the natural environment and enhances community livability.

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: An archaeological inventory survey was conducted by Robert Spear, Ph.D., in 1992, which identified four archaeological sites within the property, indicative of previous habitation and agricultural activities during the Precontact to early Historic periods.

In addition to the 1992 survey, a more recent archaeological field inspection and cultural consultation were performed by ASM Affiliates in January 2024. This study aimed to confirm previous findings and ensure that no significant cultural resources were overlooked. The investigations reaffirmed the presence of three of the four sites identified in the earlier survey while noting that one site had likely been destroyed due to land

disturbance. The current assessment concluded that there were no burial features or significant archaeological concerns within the project area. This survey informed subsequent assessments and was accepted by the State Historic Preservation Division (SHPD). According to SHPD via letter dated September 6, 2024, the project effect determination is “*No historic properties affected*”, and the permit process may proceed.

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

The area of the proposed Kaimu Cove project contains several valuable cultural, historical, and natural resources, although assessments indicate no significant archaeological sites or resources have been overlooked.

Culturally, the region is situated within the ahupua‘a of Kaimū, which has historical significance for native Hawaiians as a gathering place and is known for its connection to traditional practices, including fishing and gathering. The vicinity also hosts a historic cemetery to the northeast, which underscores the area’s cultural heritage.

Historically, previous archaeological surveys identified four sites indicating past habitation and usage, suggesting the area was utilized for agricultural and residential purposes during the Precontact to early Historic periods. The presence of features such as C-shaped structures and walls reveal the area's potential importance for understanding prehistoric Hawaiian lifeways.

In terms of natural resources, the project site is characterized by a diverse range of flora, including native and non-native species. The coastal environment supports various ecosystems, and the region is adjacent to shoreline and marine habitats that are critical for local biodiversity.

While these resources possess inherent value, assessments have shown that no significant cultural or endangered resources are found directly on the project site that would prohibit development. However, the proposed project includes measures to protect the coastal environment and respect local cultural practices such as providing a permanent shoreline access pathway, ensuring that both natural and cultural resources are considered in the planning and development process.

Possible adverse effects or impairment of valued resources: The proposed Kaimu Cove project is designed to minimize any potential adverse effects or impairments to

valued cultural or historical resources. Extensive archaeological surveys, including a significant inventory conducted in 1992 and a subsequent field inspection in 2024, have confirmed that there are no significant cultural or historical resources directly on the project site that would be affected by development. While the site does house some historical remnants of previous habitation and usage, these have been assessed and deemed not to require additional protective measures.

Furthermore, the project incorporates specific strategies to safeguard against any potential impacts, such as establishing a 40-foot shoreline setback that ensures no construction occurs within sensitive coastal areas. Additionally, there is a commitment to halt construction activities should any undiscovered cultural features be encountered during development. This proactive approach underscores the project's emphasis on respecting and protecting any cultural heritage that may be present.

Overall, while there is always a risk when developing in areas with historical significance, the evidence gathered indicates that the Kaimu Cove project is unlikely to result in any substantial adverse effects or impairments to valued cultural or historical resources. Measures in place aim to ensure that any potential impact is minimized to the fullest extent.

Feasible actions to protect native Hawaiian rights: The proposed Kaimu Cove project incorporates principles derived from the Hawai'i State Supreme Court's landmark decisions in "PASH" (Public Access Shoreline Hawaii) and "Ka Pa'akai O Ka'āina," focusing on the protection of native Hawaiian rights to the extent feasible. Recognizing the importance of these rights, the project includes measures to ensure that any potential access and cultural practices associated with native Hawaiian traditions are respected. Specifically, the establishment of a 5-foot-wide public pedestrian access easement along the northern boundary of the property enhances shoreline access, allowing the community and native Hawaiians to freely engage in traditional practices such as fishing, gathering, and cultural activities. Additionally, the project design accommodates ongoing assessments of the area to identify any cultural resources or rights that may exist, ensuring compliance with requirements to halt construction should any significant features or burials be discovered. By actively consulting with local stakeholders and

employing culturally sensitive practices, the Kaimu Cove project aims to reasonably protect native Hawaiian rights while facilitating the desired development, thus reflecting a balanced approach to land use that honors the heritage and rights of the Hawaiian community.

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 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 regulation.
3. Development of the subdivision and related improvements 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 July 5, 2024, and representations made to the Windward Planning Commission.
4. Final Subdivision Approval shall be secured within five (5) years from the effective date of this permit.

5. The Applicant shall adhere to all recommendations by the Department of Water Supply regarding the establishment of water meters for each of the new subdivided lots, including, but not limited to the construction of new meters, payment of fees, and other required entitlements.
6. Access to the project site from the Kalapana-Kapoho Beach Road shall meet with the approval of the State Department of Transportation.
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. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of Final Subdivision Approval.
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 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 as approved by the Planning Director.
12. 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 without securing a prior written determination of minor structure or activity pursuant to Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Planning Commission.
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 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.
15. Construction of single-family or duplex homes, including ohana dwellings if allowed, by individual lot owners or a master developer are covered by this approval and do not need subsequent Special Management Area review or permit.
16. A Mauka-makai public pedestrian only access to the shoreline from Kalapana-Kapoho Beach Road shall be provided along a 5-foot-wide portion of the 15-foot side yard setback area along the northern property line of the subject parcel. The Applicant shall clear and maintain the 5' pathway to ensure it is kept free of brush, trees, rubbish or other obstructions that would inhibit reasonably traversable pedestrian access.
17. The Applicant shall purchase and install a Shoreline Public Access sign, meeting with Planning Department approval, at the entrance to the public access path at Kalapana-Kapoho Beach Road. The Shoreline Public Access Sign and post may be purchased from the Planning Department.
18. 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. 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.
19. That in issuing this permit, the Department has relied on the information and data that the Applicant has 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.
20. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.