

**COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION**

**VANESSA PEARSON
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2024-000062)**

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 two (2) story, 5,200 square foot single-family residence with six bedrooms and six bathrooms, and related improvements on a 13,781 square foot shoreline parcel within the Special Management Area **be approved by the Leeward 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 a two-story, approximately 5,200-square-foot residence with six (6) bedrooms and six (6) bathrooms, an office, a kitchen, dining, living, rumpus room, elevator and laundry room. Additionally, the dwelling will also have approximately 3,100 square feet of accessory space including lanais, storage and a two-car garage as well as a swimming pool and spa which will be located on the top floor. The dwelling is proposed to be 35 feet in height and will connect to both County sewer and County water.

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 development is designed to ensure that it will not have any significant adverse environmental or ecological effects. The project will follow Best Management Practices (BMPs) during construction to minimize any potential impacts, including controlling stormwater runoff, reducing air pollution, and managing wastewater. Connection to the County sewer system will help protect coastal water

quality, and no development is planned within the 40-foot shoreline setback area, preserving the coastal ecosystems and mitigating the risk of erosion. Additionally, the use of sustainable building designs will make the project energy-conscious, taking advantage of natural wind and sun patterns. Any minor adverse impacts that may occur are expected to be temporary, such as dust or noise during construction, and will be mitigated through appropriate measures like scheduling work to avoid seabird fledging seasons and minimizing the use of artificial lighting to prevent seabird disorientation. Overall, these adverse effects are minimized to the extent practicable and are clearly outweighed by the benefits the project offers, including improved public health and safety through compliance with modern building codes and flood management regulations, as well as the public interest in boosting local employment and economic activity.

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 residence and related development on a 13,781 square foot 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 development is consistent with the objectives and policies outlined in Chapter 205A-26, HRS, and the Special Management Area (SMA) guidelines in Rule

No. 9 of the Planning Commission Rules of Practice and Procedure. The development prioritizes the protection and preservation of coastal resources, including reefs and shorelines, by ensuring that no improvements are proposed within the 40-foot shoreline setback area and following BMPs to prevent erosion, sedimentation, and pollution during construction. Public access to and along the shoreline will remain unaffected, aligning with the policy to provide coastal recreational opportunities. The project also seeks to protect scenic and open space resources by maintaining the coastal view corridors and integrating the new residence in a manner compatible with the surrounding environment and community, ensuring minimal visual disruption. Furthermore, the project supports public health and safety by complying with flood zone regulations, building codes, and hazard mitigation strategies. In accordance with the SMA guidelines, the development will not introduce any significant adverse environmental impacts, as mitigative measures are in place to address potential concerns. The long-term benefits, such as local employment, economic stability, and continued public shoreline access, clearly align with the SMA's goals of balancing development with environmental stewardship and public interest.

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, Kona Community Development Plan (KCDP), 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 LUPAG map designates the site as Open (ope). The proposed development is consistent with the County General Plan, the Kona Community Development Plan (KCDP), the County of Hawaii Zoning Code, and other applicable ordinances. The County General Plan emphasizes sustainable and balanced growth, protecting open spaces, and enhancing economic opportunities, all of which are aligned with the proposed development's design. The project, located in an established residential area, respects shoreline setbacks and maintains shoreline public access, thus preserving scenic and open spaces. The General Plan's policies promoting urban development in

areas already equipped with infrastructure are reflected in the proposed residence, which will connect to existing public utilities such as water and sewer systems.

Similarly, the KCDP encourages compact, transit-oriented development in designated urban areas, and the proposed development fits within the urban growth boundary outlined for Kona. By focusing on development within a subdivision that is already residentially zoned, the project minimizes disruption to rural areas and supports the community's long-term growth patterns.

Moreover, the project complies with the County of Hawaii Zoning Code, specifically within the RS-15 zoning designation, which allows for single-family residential use. The proposed structure adheres to height restrictions and setback requirements, ensuring that it blends seamlessly with the surrounding neighborhood. Additional ordinances related to flood management, coastal protection, and public access are also met, ensuring that the development mitigates environmental risks and aligns with community and environmental protection standards.

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 previous development history of the subject parcel 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 a HRS, Ch. 6E-42 review, however, no response was received from SHPD, this is typical when SHPD agrees that the proposed project will not have any impacts or effects on any valued resources in the area.

The valuable cultural, historical, and natural resources found in the area: The applicant notes that the subject parcel is located adjacent to an established public shoreline access easement and no changes to access or uses along the shoreline makai of the project site are proposed or anticipated. It is not known whether the subject site or immediately surrounding area was ever used for the gathering of plants by native

Hawaiians other than the shoreline and ocean which is outside the project area. Given the residential development of the area, it would appear very unlikely that the site would serve such a purpose today and/or in the recent past. Thus, the project does not appear to present any cultural impacts.

Possible adverse effects or impairment of valued resources: The development has been carefully planned to ensure that public shoreline access, which is crucial for traditional Hawaiian gathering, fishing, and cultural practices, remains unimpeded. Public access easements along the shoreline and adjacent areas will be maintained throughout the construction and operational phases, allowing native Hawaiians and the public to continue using these areas for cultural and recreational purposes.

Feasible actions to protect native Hawaiian rights: Prior archaeological and cultural studies of the site during establishment of the subdivision and construction of the existing seawall/walkway have not identified any significant traditional or cultural resources. However, if any native Hawaiian rights or cultural resources are discovered during construction, all work will cease in the affected area, and the appropriate authorities, such as the State Historic Preservation Division (SHPD) and the Department of Land and Natural Resources (DLNR), will be contacted. The applicant will comply with any necessary measures to protect these resources and honor gathering or access claims as required by law. This approach ensures that native Hawaiian rights are safeguarded and that the development proceeds in a culturally respectful manner.

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 May 28, 2024, and representations made to the Leeward Planning Commission.
- 4) Construction of the proposed development shall be completed within five (5) years from the effective date of this permit.
- 5) 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.
- 6) All construction and maintenance activities shall comply with Chapter 27, Flood Control of the Hawai‘i County Code.
- 7) All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai‘i County Code.
- 8) All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- 9) The property shall connect to the public sewer in accordance with Section 21-5 of the Hawai‘i County Code prior to issuance of a Certificate of Occupancy.

- 10) The applicants shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
- 11) 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.
- 12) 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 impact the shoreline setback area, or the shoreline access wall/pathway located on the makai property boundary. The barrier will remain in place until all construction activities are completed.
- 13) 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.
- 14) 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.
- 15) 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.