

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

DAVID EBENAL
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2025-000076)

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-story, 4,942 square-foot (sf) single-family residence with four bedrooms, four and a half bathrooms, and related improvements on a 0.3446-acre shoreline 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 seeks a Special Management Area (SMA) Use Permit to construct a two-story, single-family residence on a 0.3446-acre parcel located at 75-5436 Kona Bay Drive in Kailua-Kona, Hawai'i. The home will include approximately 4,942 square feet of total development area, featuring four bedrooms, four-and-a-half bathrooms, two single-car garages, a lanai, and a 12-by-22-foot spa. Designed for personal residential use, the project will connect to existing water, sewer, electrical, and communication utilities already available within the Kona Bay Estates subdivision. Electricity, telephone, and internet utilities are already available to serve the property. No additional uses other than the dwelling and related accessory improvements are proposed for this project. The proposed building site will occupy roughly 4,942 square feet of the property area and is strategically sited approximately 50 feet inland from the shoreline to mitigate potential coastal hazards and minimize visual impacts. The project's construction cost is estimated at approximately \$2,900,000, with construction anticipated to take roughly 12 to 18 months following permit approvals.

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.

In review of the SMA guidelines under HRS 205A-26(2)(A), the proposed development is not anticipated to have any substantial adverse environmental or ecological effects. The project has been carefully designed to comply with all applicable environmental regulations, including shoreline setback requirements, runoff containment, and flood zone development standards. The building footprint avoids sensitive areas, with all construction activity confined to a previously graded and disturbed parcel that lacks significant natural vegetation or wildlife habitat.

Environmental assessments and supporting studies—such as the archaeological field inspection and cultural impact analysis—have found no historic properties, traditional cultural practices, or ecological resources that would be negatively impacted by the development. Runoff from construction and residential activities will be contained and managed on-site, thereby protecting nearshore coastal waters and ecosystems.

Furthermore, public shoreline access will remain unobstructed, and the project maintains consistency with the goals of the Hawai‘i Coastal Zone Management Program. As such, any minimal potential impacts are considered to be adequately mitigated and are clearly outweighed by the public interest in maintaining orderly development, respecting private property rights, and supporting local economic activity through investment and construction. The proposed residence, therefore, meets the criteria set forth under HRS 205A-26(2)(A).

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 develop a single-family dwelling and related development on the subject parcel will not have a significant adverse environmental or ecological effect upon the Special Management Area. This determination is based on the following:

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

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

The proposed development of a single-family 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:

Public access to the shoreline, including the established pedestrian path connecting Keiki Ponds to the Old Airport State Recreation Area, will remain open and unobstructed during and after construction. The project does not interfere with coastal recreational use.

Historic Resources:

Archaeological and cultural impact studies determined that no historic properties or traditional cultural practices are associated with the subject parcel. A determination of “no historic properties affected” has been requested from SHPD, to date, no response from SHPD has been provided.

Scenic and Open Space Resources:

The proposed home is situated in an area with minimal visibility from public vantage points, and its design is consistent with surrounding residential structures. Scenic coastal views will not be adversely affected.

Coastal Ecosystems and Marine Resources:

The development avoids shoreline setback areas and includes measures to prevent runoff, thus protecting nearshore marine ecosystems. No threatened or endangered animal or plant species are present and as such no adverse impact to flora, fauna, or ecosystems

would be expected to result from the proposed development or any activities associated with the use.

Coastal Hazards:

Structures are sited in Flood Zone D, above the base flood elevation of adjacent Zone AE-10, with no construction in the tsunami inundation area. Emergency access and evacuation plans are available and practical.

Managing Development:

The parcel is within a developed, gated subdivision with existing infrastructure. The project complies with zoning, community development plans, and SMA requirements, reflecting responsible management of coastal development.

Consequently, the proposed action supports and fulfills the policy goals of preserving coastal ecological integrity, managing coastal hazards responsibly, and ensuring sustainable use of the coastal zone, as outlined in both Chapter 205A-26 HRS and Rule No. 9 of the Planning Commission's Rules.

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 map designation for the subject property is Open (ope), which allows for this type of development. The parcel is zoned Single Family Residential- 15,000 square feet (RS-15) by the County of Hawai'i. RS-15 is defined as a Single-Family Residential District where the minimum building site area is 15,000 square feet. The proposed single-family residence, adhering to its applicable building and shoreline setbacks, is consistent with the lot's designated zoning. The proposed development will not create greater density than the zoning intends.

The proposed project conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Open (ope). In the 2005 Hawai'i General Plan, the Open (ope) designation is defined as "parks and other recreational areas, historic sites, and open shoreline areas." This designation is consistent with the

existing development of Kona Bay Estates as the development is oriented towards public recreation and use. A makai-side easement extends along the lots of all shoreline residences on Kona Bay Estates which connects pedestrians from the Keiki Ponds to the Old Airport Recreation Area. The lateral shoreline path is frequented by tourists and locals as a thoroughfare, but it is also used as a public place to stop and observe the tidal pools, and fish from the coastline makai of the subject parcel.

The proposed project aligns with the LUPAG policies relevant to Open Land Use spaces, which are slated to provide and protect open space for the social, environmental, and economic well-being of the County of Hawai‘i and its residents as well as to protect designated natural areas. The proposed construction of a single-family residence and related development is keeping within these goals as it will continue to provide designated and reliable access for the public to access the shoreline and adjacent parks which aid in managing impacts from the public on the shoreline. In keeping with the other established residences of the Kona Bay Estates, the proposed project is designed around maintaining the existing public access to the shoreline. The shoreline access path within the 4-foot wide makai-side easement will remain open and accessible during the entirety of construction and afterwards.

The Kona Community Development Plan (KCDP) for the area of North Kona includes guiding principles that the proposed project will maintain, including preserving the diverse coastlines, protected nearshore waters, open space, and vast untouched upland landscapes, and to direct future growth patterns toward compact villages, preserving Kona’s rural, diverse, and historical character. The proposed development aligns with the above-mentioned KCDP principles as it occurs within a designated, subdivided lot, between existing single-family residences of similar style and size. It does not disrupt untouched landscapes as the lot has been previously graded and includes existing minor construction (walls). No part of the development is proposed within the shoreline setback, nor will it impact the public access on the makai side of the parcel, thus helping to preserve the coastline. In summary, the proposed single-family residence is compatible with the intended use and density of the RS-15 zoning, adheres to the objectives and land

use vision of the County General Plan and KCDP, and complies with applicable ordinances and policies designed to manage growth responsibly in coastal areas.

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: As required by the Ka Pa‘akai decision, a comprehensive Cultural Impact Assessment (CIA) was conducted by ASM Affiliates and included in the Special Management Area (SMA) Use Permit application. According to the documentation submitted, the subject parcel has been the focus of both historical and recent archaeological investigations, including a comprehensive field inspection conducted on January 12, 2025, by Dr. William Gardner, a Senior Archaeologist with ASM Affiliates. During this inspection, the entire 0.3446-acre parcel was visually assessed using systematic north-south pedestrian transects spaced at three-meter intervals to ensure 100% surface coverage. The survey found no archaeological sites, features, or cultural deposits present within the project area. This assessment reviewed historical land use, archaeological findings, and traditional practices associated with the project area. There are no known historic or cultural sites, and the area was previously graded as part of the subdivision development, further reducing the likelihood of intact cultural resources. The original AIS was reviewed by SHPD and determined that no impacts from the project were anticipated. Additionally, SHPD has not responded to the current “no-effect” determination request submitted by the County.

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

While the project site itself does not support ongoing traditional or customary practices, the cultural study acknowledges that subsistence fishing and gathering activities occur along the shoreline makai of the parcel, outside the proposed development area. The shoreline access trail, which enables these cultural and recreational activities, will remain fully accessible and unobstructed both during and after

construction, thereby preserving public and cultural access to the coastline.

Possible adverse effects or impairment of valued resources: The existing vegetation may be destroyed by ground alteration, however, there is no evidence that the flora in the project area is particularly desired or used for cultural practices since it is severely limited on the project parcel. Archaeological remains could inadvertently be uncovered during construction activities, however, according to the applicant, they will adhere to the SHPD condition regarding inadvertent finds.

Feasible actions to protect native Hawaiian rights: As part of its commitment to protecting cultural and environmental resources, the proposed development includes several important safeguards. If any human remains or cultural resources are inadvertently discovered during construction, work will be halted immediately, and the State Historic Preservation Division (SHPD) will be promptly notified in accordance with regulatory procedures. Additionally, stormwater management practices will be implemented to ensure that runoff is contained on-site and does not enter or degrade nearshore ecosystems, which may support traditional fishing or gathering activities. The project will also maintain the existing public shoreline path in an open and usable condition, thereby upholding public trust responsibilities and ensuring continued access for customary practices and recreational use. 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 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. Other than the proposed project as described in this permit, no further work is permitted under this approval.
4. Construction of the single-family dwelling and related improvements shall be conducted in a manner that is substantially representative of plans and details as contained within the SMA Application dated March 4, 2025, and representations made to the Leeward Planning Commission.
5. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit.
6. 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.
7. The applicant shall comply with Chapter 27 - Flood Control, of the Hawai'i County Code.
8. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
9. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
10. 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.

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 to minimize impacts to the nearshore and riverine areas.
12. 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.
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, 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.

15. 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.
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.