

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

**ATLAS SURREY LLC
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2025-000071)**

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, 2,560 square-foot (sf) single-family residence with five bedrooms, three bathrooms, and related improvements on a 1.998-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, approximately 2,560-square-foot single-family farm dwelling with five bedrooms and three bathrooms on a 1.998-acre parcel located in North Hilo, Hawai‘i. The dwelling will include approximately 960 square feet of lanai (patio) areas and a 576-square-foot garage, totaling approximately 1,536 square feet of accessory structures. Related site improvements include installation of a gravel driveway for property access, a 10,000-gallon rainwater catchment tank to provide residential water supply and fire protection, and an individual wastewater system (IWS) approved by the Department of Health. Electricity, telephone, and internet utilities are already available to serve the property. Potable water will be provided by the proposed catchment system, as county water is not available at the site. No additional uses other than the dwelling and related accessory improvements are proposed for this project. The proposed building site will occupy roughly 6,000 square feet of the property area and is strategically sited approximately 200 feet inland from the edge of an approximately 180-foot-high coastal sea pali to mitigate potential coastal hazards and minimize visual impacts. The project's

construction cost is estimated at approximately \$510,000, with construction anticipated to take roughly 12 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 reviewing the SMA guidelines listed under HRS 205A-26(2)(A), the proposed development is not anticipated to have any substantial adverse environmental or ecological effects. The proposed project involves construction of a single-family dwelling and associated accessory structures on a previously cleared, undeveloped parcel. Environmental and ecological impacts are expected to be minimal and temporary, mainly confined to the construction phase, and will be mitigated through Best Management Practices (BMPs) for erosion and sedimentation control, stormwater management, and pollution prevention. There are no known significant natural, archaeological, historic, cultural, or ecological resources on-site, and the dwelling will be sited approximately 200 feet from the coastal pali, significantly reducing potential impacts related to coastal hazards or shoreline erosion. Furthermore, wastewater management will utilize an approved individual wastewater system, and potable water will be supplied by a rainwater catchment system, minimizing impacts to surrounding coastal resources. Thus, the project has appropriately minimized potential adverse effects to the extent practicable, and any minor impacts during construction will be clearly outweighed by the benefits provided by the dwelling to public health, safety, and compelling public interest, consistent with the SMA guidelines 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 an Ulu farm, residential structures 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:

No development will be within or near the shoreline setback area and will be approximately 200 feet from the top of the Pali to minimize future impacts related to coastal erosion. Where the property abuts the Pacific Ocean, the vertical slope of the shoreline Pali makes any past shoreline access highly improbable. Hakalau Park, lying on the other side of Hakalau Bay, south of the proposed project site, provides shoreline access and a recreation area for the public.

Historic Resources:

Based on the history of development and use, the area of development proposed shows no evidence of historic properties, including those relating to sugarcane cultivation in this area. The subject property is not known to be used for gathering, ceremonial, or other cultural purposes by Native Hawaiians therefore there appears to be no potential for cultural impact to culturally valued resources or cultural practices.

Scenic and Open Space Resources:

No impact on the open space resources will occur from the proposed project or access to the Hakalau park located well south of the project area. Additionally, the project

site is blocked via landforms and vegetation such that no views from the highway exist or will be impacted by the proposed project.

Coastal Ecosystems and Marine Resources:

The subject property abuts the shoreline; however, the distance of the proposed development 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. 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:

The property is located within Flood Zone X, outside of the 500-year flood area, and is not located within the tsunami inundation zone since the subject property is located a minimum of 180 feet above mean sea level. 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, 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 plan was adopted by ordinance in 1989 and revised in 2005; the map designation for the subject property is Open (ope) and Important Agriculture Lands (ial), which allows for this type of development. The Hāmākua Community Development Plan (HCDP) was developed under the framework of the February 2005 County of Hawai'i General Plan and was adopted in 2018 via Ordinance 2018-78 by the Hawai'i County Planning Commission. The proposed development is consistent with the County General Plan, the Hāmākua Community Development Plan (HCDP), the County of Hawai'i Zoning Code, and other applicable ordinances. Specifically, the project aligns with the County General Plan by

maintaining the agricultural designation (A-20a), preserving the rural character, and adhering to guidelines intended for land classified as Important Agricultural Land. The dwelling is designed to complement the existing rural-agricultural land use pattern without diminishing the site's agricultural potential. The project is also aligned with General Plan policies aimed at minimizing environmental impacts, employing solar energy measures, and utilizing BMPs to mitigate construction-related effects such as runoff, erosion, and sedimentation.

Furthermore, the development is consistent with several objectives of the Hāmākua Community Development Plan (HCDP), including Objective 1, which seeks to protect watershed ecosystems and open spaces; Objective 2, protecting viable agricultural lands and viewscapes; and Objective 4, which emphasizes preserving the social and cultural diversity of the Hāmākua area. The careful siting of the proposed dwelling—approximately 200 feet away from the coastal pali—supports these HCDP goals by preserving scenic views, open spaces, and protecting coastal resources. Additionally, the project is consistent with County zoning regulations, as the proposed residential use is permitted within the Agricultural 20-acre (A-20a) zoning classification, and the planned improvements do not propose any density increases or zoning changes. Therefore, the proposed development clearly supports the objectives and policies outlined in the County General Plan, HCDP, County Zoning Code, and other applicable ordinances.

In summary, the proposed project would be consistent with pertinent goals and policies of the Hawai‘i County General Plan and the Hāmākua Community Development Plan (HCDP). While the HCDP does not list specific land uses for the subject parcel, the proposed residence does align with certain priorities of the natural and cultural resources, and community infrastructure sections, such as: protecting coastal areas from development, protecting, and preserving coastal view planes, preserving historic resources, ensuring appropriate public access is retained or bolstered, and concentrating future development in an existing subdivision.

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: The applicant submitted the project details and development application to the SHPD for their HRS Ch. 6E-42 review and concurrence. SHPD has not responded, however, a review of similar development in this area, and the long history of land impacts due to past agriculture indicates that no historic properties would be affected by the proposed project.

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

Archaeological resources are highly unlikely to exist on the subject property, which has been used for sugar cultivation purposes beginning as early as 1878 with the establishment of the Hakalau Sugar Plantation. In the 1960's, the Hakalau Plantation Company became part of the Pepe'ekeo Sugar Company, and later part of Mauna Kea Sugar.

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.

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. 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: The proposed development will not restrict access to, and the use of natural resources at the existing park located south of the project subdivision. Conditions of approval have been added to protect endangered, threatened, and indigenous birds such as the Newell's shearwater and the Hawaiian Petrel with regards to lighting. A condition of approval has also been added to protect any unidentified cultural, historical, and natural resource(s) in the event any are

encountered during construction. To the extent that traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights.

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

Based on the above findings, the proposed development will not have substantial adverse impacts on the environment, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area. Approval of this request is subject to the following conditions:

1. The applicant(s), its successor(s), or assign(s) (Applicant) shall be responsible for complying with all 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 January 20, 2025, and representations made to the Windward Planning Commission.
5. Construction of the proposed development shall be completed within five (5) years from

the effective date of this permit.

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.