

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

SCOTT F. CHURCH & JOHN TOTAH
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2025-000080)

Upon careful review of the applicant's request against the guidelines for a Special Management Area Use Permit, the Planning Director is recommending that **this request to construct a two (2) story, five (5) bedroom, five (5) bathroom single-family residence with a pool and related improvements be approved by the Leeward Planning Commission.** Since this recommendation is made without the benefit of public testimony, the Planning 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 findings:

The applicant requests a Special Management Area Use Permit to construct a new single-family dwelling on the project parcel located within the Special Management Area (SMA) that complies with current building codes and meets the needs of the applicant. The proposed dwelling is a single-story, 28½-foot (ft) tall, 3,870 square-foot (sf) dwelling with five (5) bedrooms, five (5) bathrooms, a kitchen, living room and two (2) laundry rooms. The project also includes a single-story, 936-sf-attached garage and swimming pool makai of the proposed residence. The applicant will connect to the existing County sewer system which is available on the property. Potable water will be provided via an existing Department of Waer Supply (DWS) water meter.

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

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

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

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

The proposed single-family dwelling is within a well-established residential development. Many of the shoreline parcels in this area are fully developed with single-family dwellings, condominium complexes and related development. The Applicant has designed the development to be outside the 40-foot shoreline setback boundary. There is an existing shoreline access located approximately 800-ft south of the subject parcel at the Kona Makai Condominium and will not be impacted by the proposed project. Additionally, there is another shoreline access point located approximately 250-feet north of the subject parcel located on the south side of the Kona Tiki Condominium. Lateral shoreline access is located along the shoreline area makai of the project parcel. No work, staging, or placement of heavy machinery will occur within the 40-foot shoreline setback area, and a condition of this approval requires that the 40-ft. shoreline setback line be marked with stakes and silt fencing to further protect the shoreline setback area. Based on the above factors, the proposed project will not significantly alter, or impact coastal resources nor impact public access to and along the shoreline.

The subject parcel is 15,203-sf in size, is undeveloped and free of structures within a well-established residential and resort community. The parcel contains areas of overgrown vegetation; however, it is not known to be a habitat for any rare or endangered floral or faunal species and thus would not be affected by the proposed project. A new dwelling, garage and related improvements on this property would have no adverse effect on the natural beauty and scenic view planes since the surrounding area is a dense, urban environment. Based on the small size of the parcel, the previously disturbed nature of the project site, and design characteristics, it is anticipated that no historic properties will be affected, and there would be no change to the shoreline/fishing access or cultural practices that take place along this coastline or access via the County parcel located south of the project parcel.

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 demolish an existing single-family residence and carport and construct a new single-family residence and related

development on a 15,203-sf parcel of land will not have a significant adverse environmental or ecological effect upon the Special Management Area.

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

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

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

Recreational Resources

The proposed project will not impede coastal recreational opportunities. There is an existing shoreline access located approximately 800-ft south of the subject parcel at the Kona Makai Condominium and will not be impacted by the proposed project. Additionally, there is another shoreline access point located approximately 250-feet north of the subject parcel located on the south side of the Kona Tiki Condominium. Lateral shoreline access is located along the shoreline area makai of the project parcel. All demolition and construction activities will be done outside the 40-foot shoreline setback area. No staging of materials or heavy machinery will be allowed in the shoreline setback area. Thus, the project will not inhibit any coastal recreational opportunities accessible to the public.

Historic Resources

The small subject parcel is within a well-established residential community with similar single-family residences, condominium complexes and related developments such as pools and landscaping. The Applicant has stated that no valuable cultural resources and practices have been known to occur on the parcel. Additionally, there would be no historic resources, such as the shoreline public access and lateral shoreline access, that would be adversely affected by the proposed project.

Scenic and Open Space Resources

The project is consistent with policies to protect and enhance scenic and open space resources under HRS 205A-2(3)(A). The project will preserve the shoreline open space by maintaining a 40-foot shoreline setback free of structures. The visual character of the coastline will be preserved, and new development will align with the surrounding residential single-family homes and condominium complexes, minimizing impacts on coastal viewsheds. In addition, by enhancing public access and not introducing structures into critical view corridors, the project contributes positively to the maintenance of open space aesthetics along this portion of Ali'i Drive.

Coastal Ecosystems and Marine Resources

The subject property abuts the shoreline; however, the design of the proposed residence and the conditions of construction permits will minimize potential impacts to coastal resources such as soil erosion. All mandated setbacks and government regulations related to runoff and nearshore waters will be adhered to. 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. Additionally, the applicant will connect to the County sewer system which will further minimize potential impacts to coastal waters.

Coastal Hazards

The property is located in Flood Zone X and Flood Zone VE. No work will occur within the 40-foot shoreline setback area which includes the VE flood zone. The proposed structures will not be subject to flooding since the dwelling will be built according to flood zone regulations and will be outside the 40-foot shoreline setback. Further, on-site drainage systems will be put in place to capture runoff from the proposed project. The subject property lies between ten (10) and twenty (20) feet above sea level and within the tsunami evacuation zone. However, a Civil Defense siren is located less than 2,000-ft to the north of the subject property.

Based on the above information, the proposed development is consistent with the objectives and policies of Chapter 205A, HRS.

In review of the SMA guidelines as listed under HRS 205A-26(2) (C) above, the proposed development is consistent with the County General Plan, the Zoning Code and the Kona Community Development Plan. The property is zoned Resort-Hotel 1,250 square feet (V-1.25) which provides for medium and high-density residential and transient uses in areas with full community facilities and services. A single-family residential project would be consistent with the current zoning designation and will result in an intensity of land that is no higher than what is permitted by the existing V-1.25 zoning. The LUPAG designation for the subject property includes both Medium Density Urban (MDU) and Open (Ope) designations. The majority of the parcel falls within the MDU designation, which supports the village and neighborhood commercial, single-family and multi-family residences confined to urban growth area.

The proposed development aligns closely with the County General Plan, the Kona Community Development Plan (KCDP), the Hawai'i County Zoning Code (Chapter 25), and related ordinances through the following considerations:

Under the Kona Community Development Plan, which channels General Plan objectives into region-specific policies, the project advances the medium density urban district by constructing a single-family home, keeping with the character of the surrounding properties which include single and multi-family residences. Further, the

project protects scenic and coastal resources and supports community-based economic resilience. KCDP policies encourage support for protection of visual corridors, stewardship of cultural and natural resources, constructing a residence away from protected viewplanes, and minimal disturbance to native vegetation.

Per the Zoning Code (Chapter 25), the site's V-1.25 classification permits dwellings while setting standards for setbacks, height, and lot coverage. The project adheres to these requirements—respecting shoreline and viewplane setbacks, maintaining a low building height relative to elevation, and ensuring accessory structures remain subordinate to the primary dwelling, demonstrating full consistency with zoning regulations.

Additionally, the development engages with COH Chapter 10 (Erosion & Sedimentation Control) in the Zoning Code by committing to Best Management Practices (BMPs) during construction to prevent runoff and protect coastal waters. The integration of potable water from DWS, an amended DOH-approved wastewater system, and future photovoltaic options further demonstrate compliance with public utilities and public health and safety provisions woven through County standards.

In combination, these factors illustrate that the proposed project is deeply aligned with the County General Plan's vision, the KCDP's localized objectives, and the County Zoning Code's land-use and environmental controls, while also engaging positively with other applicable ordinances governing water, wastewater, and the SMA.

The project also complies with the County Zoning Code (Chapter 25, Hawai'i County Code) as the property is zoned V-1.25 (Resort-Hotel District), allowing single-family, multiple-family dwellings, hotels and other transient oriented uses at densities consistent with the proposed development. Plans have been designed to conform to zoning standards for setbacks, height, and land use intensity, and will comply with Planning Department requirements for plan approval, landscaping, and road improvements.

In addition, the project aligns with the Kona Community Development Plan (KCDP). The site lies within the Kona Urban Area and falls within the outer boundary of

the Kailua Village Transit-Oriented Development (TOD) area, where compact, higher-density development is encouraged to support public transit and urban vitality.

The project fulfills Policy LU-1.2, which directs future growth into the Kona Urban Area, and Policy LU-1.4, promoting consistency with the existing Land Use Pattern Allocation Guide (LUPAG) designations. Furthermore, the project supports Objective LU-2 by concentrating growth into compact, walkable communities with access to utilities and services, and maintaining the area's urban character.

In conclusion, the proposed development complements the County's broader land use goals by promoting orderly urban development, supporting needed housing supply near employment centers, enhancing public access to coastal resources, and preserving shoreline open space.

Managing the effect of growth and development:

The proposed project is the construction of a new single-family dwelling and related improvements in keeping with the surrounding area's character. The proposed project will not result in any change to the area's character or an increase in density and will be built in accordance with the current County and building codes.

Natural Resources and Shoreline:

The proposed project will protect and preserve the quality of areas endowed with natural beauty, including the quality of coastal scenic resources as the project will be developed with restraint to coastal impacts by incorporating Best Management Practices to minimize sedimentation, erosion and control stormwater management. The proposed project also reduces impacts on water quality by connecting to the County wastewater system. Further, the applicant supports a conservative approach to the conservation of the shoreline by maintaining existing vegetation near the shoreline, controlling runoff for the building site and complying with the requirements of the Federal Flood Insurance Program and Chapter 27 Floodplain Management. Siting the home outside of the shoreline setback area will have no impact on public use and recreation in the shoreline setback area and will neither impact or alter the shoreline.

The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist. In view of the Hawai'i State Supreme

Court's "PASH" and "Ka Pa'akai O Ka'Aina" decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources:

Based on the development history which includes grading on the subject parcel, no historic sites have been 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. SHPD acknowledges the potential for archaeological artifacts to be found on the subject parcel and surrounding areas and requests archaeological monitoring during the construction phase and an archaeological monitoring plan (AMP) meeting the requirements of HAR §13-279-4 be submitted for SHPD review and acceptance prior to the issuance of permits for the project. This is included as a condition of approval for the subject SMA Use Permit.

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 immediate 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:

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. A biological survey was conducted on the subject property by Ron Terry in 2003 which identified the potential for a few endangered species to be found on the subject site and surrounding areas which include the Hawaiian petrel (*Pterodroma*

sandwichensis) and Newell's shearwater (*Puffinus auricularis newelli*). Additionally, it is possible to find Hawksbill (*Eretmochelys imbricata*) and Hawaiian green sea turtles (*Chelonia mydas*) and Hawaiian Monk Seal (*Monachus schauinslandi*) in the area due to the subject property being adjacent to the shoreline. All construction activities will follow Best Management Practices to minimize adverse point and non-point pollution to coastal resources and surrounding areas.

Feasible actions to protect native Hawaiian rights:

A public pedestrian access route to the shoreline runs through the County owned parcel located 250-ft north of the subject property at Kahului Landing. Lateral shoreline access will not be affected by the proposed project as the project will occur outside of the 40-ft shoreline setback area. Further, there is no evidence the property has been used for traditional or customary Native Hawaiian rights on the property or surrounding area.

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 June 24th, 2025, 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 onsite and shall not be directed toward any adjacent properties.
- 9) The method of sewage disposal shall meet the requirements of the Department of Health.
- 10) 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.
- 11) The Applicant shall install a silt fence barrier along the entire length of the 40-foot shoreline setback area to ensure that no work or impacts affect the shoreline setback area. The barrier will remain in place until all construction activities are completed.
- 12) The applicant shall conduct archaeological monitoring for identification purposes and shall submit an archaeological monitoring plan to the State Historic Preservation Division

(SHPD) for review and acceptance prior to the issuance of grading/grubbing or building permits for the project.

- 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 SHPD 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).

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.