

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

DUSTIN JAMES HOLLENBACK, ESZTER TRUST
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2025-000070)

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 the **request to construct a two-story, approximately 7,738-square foot single-family dwelling, a two-story, approximately 5,080-square foot commercial agriculture building to support future taro and cacao farming activities, and related improvements on a 2.5-acre shoreline parcel within the Special Management Area (SMA) be approved by the Windward 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 farm dwelling and a commercial agricultural building, along with related site improvements, on a 2.50-acre shoreline parcel in Ninole, North Hilo District. The proposed farm dwelling will serve as the applicant’s primary residence and will have a total enclosed area of 5,252 square feet, including 3,171 square feet of upstairs living space and 2,081 square feet of downstairs living space, with additional lanai, entry, and garage areas bringing the total structural footprint to approximately 7,738 square feet. The agricultural building will support commercial farming operations and is designed as a split-level structure with a 2,400-square-foot footprint. It includes 1,240 square feet of upstairs enclosed space, 1,200 square feet of downstairs enclosed space, and 1,440 square feet of accessory deck and lanai space, for a total of 3,640 square feet of enclosed and accessory area. The facility will house farm equipment, produce cleaning and cold storage areas, an office, and a honey processing space to support activities such as taro and cacao cultivation and apiary operations. The project also includes installation of an

individual wastewater system to serve six bathrooms, potable water service for the farm dwelling from the County Department of Water Supply, utility access via existing easements, and full compliance with shoreline setbacks and Conservation District boundaries.

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.

Based on the submitted application and in consideration of the guidelines under HRS §205A-26(2)(A), the proposed development is not expected to have any substantial adverse environmental or ecological effect. The project is sited on previously disturbed land historically used for sugarcane cultivation and currently maintained as open, mowed pasture. The proposed structures are located well inland, respecting both the 40-foot shoreline setback and the Conservation District boundary, with no development occurring in sensitive coastal areas or native vegetation zones. The site is not within a flood zone or tsunami inundation area, and stormwater runoff will be minimized through retention of vegetative cover and the implementation of Best Management Practices (BMPs) during construction, including silt fencing and erosion control. No rare, threatened, or endangered plant or animal species have been identified on the parcel, and the State Historic Preservation Division (SHPD) has issued a determination of “No historic properties affected.” Wastewater will be managed via a DOH-approved Individual Wastewater System, and the project includes provisions for proper backflow prevention and responsible use of potable and non-potable water sources. Given these factors, any minor adverse effects are minimized to the extent practicable and are clearly outweighed by the project's contributions to local food production, agricultural self-sufficiency, and rural economic activity, aligning with public health, safety, and long-term sustainability goals.

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 residential and agricultural homestead 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 residential and agricultural homestead, 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 development will not adversely impact recreational resources. The subject property is situated atop a steep, 200-foot-high shoreline pali that renders ocean access extremely hazardous and impractical. There is no evidence of public shoreline access, fishing, or other recreational uses on or adjacent to the property. Neighbors and the applicant have confirmed that the shoreline is not used recreationally, and the project does not inhibit future recreational access should it become feasible.

Historic and Cultural Resources

The project is not expected to impact any historic or cultural resources. The State Historic Preservation Division (SHPD) reviewed the application and issued a determination of “No historic properties affected” under HAR §13-284-7(a)(1).

No archaeological features, traditional practices, or cultural sites have been identified on the property, and no cultural uses (such as fishing, gathering, or ceremonial activities) are known to occur.

Scenic and Open Space Resources

The development is consistent with the protection of scenic and open space resources. The property is not visible from any public roadways, including the Hawai'i Belt Road, and proposed structures are located below viewplanes protected on adjacent parcels. Additionally, the site retains substantial open space and vegetative buffers, ensuring minimal visual impact on the surrounding landscape.

Coastal Ecosystems

The project will not have significant adverse impacts on coastal ecosystems. The proposed structures are located approximately 60 feet from the top of pali which is designated as the shoreline, and outside the Conservation District. The 200-foot high shoreline pali provides a natural buffer, and Best Management Practices (BMPs) will be implemented during construction to control erosion and sedimentation. No marine or coastal flora and fauna are expected to be impacted.

Economic Uses

The proposed agricultural use promotes long-term economic sustainability through diversified farming, including taro, cacao, and honey production. The project supports local food security and contributes to the rural agricultural economy, which is a core goal of SMA policies and the Hawai'i County General Plan.

Coastal Hazards

The project site is not vulnerable to tsunamis, flooding, or sea level rise due to its elevation above 200 feet and location within FEMA Flood Zone X. The 200-foot-high shoreline pali provides a natural defense against coastal erosion and storm surge. The development has been designed to avoid hazard-prone areas, with all structures sited inland from the shoreline setback.

Managing Development

The proposed project adheres to applicable zoning, subdivision, and utility regulations. It is compatible with the surrounding land uses, and infrastructure such as water, wastewater, and electricity has been addressed through agency consultation and proposed improvements. The development is modest in scale and respects both physical and regulatory constraints of the area.

Public Participation

The applicant has complied with SMA public notice requirements and has engaged in outreach with neighboring property owners. No objections from adjacent landowners were noted in the application, and all agencies were given an opportunity to review and comment during the permitting process.

Beach Protection

The steep shoreline and absence of accessible sandy beaches mean the project will have no impact on beach resources. The applicant will maintain existing vegetation along the shoreline pali, which helps stabilize soils and prevent erosion. There will be no construction makai of the shoreline setback, within the Conservation District, or in areas vulnerable to wave action.

Marine Resources

Given the distance from the ocean and the topographic separation provided by the shoreline pali, the project poses no significant risk to marine resources. Measures such as vegetated buffers and a properly located wastewater system ensure that runoff and pollutants will not enter the marine environment.

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 LUPAG designation for the subject property includes both Important Agricultural Lands (IAL) and Open. The majority of the parcel falls within the IAL designation, which supports the protection and use of land for long-term agricultural productivity, while the portion designated as Open coincides with the Conservation District along the steep shoreline pali, where no development is proposed. The parcel is zoned Agricultural 20-acre (A-20a) by the County of Hawai‘i. A-20a is defined as an Agricultural District where the minimum building site area is 20 acres and where permitted uses include farm dwellings, agricultural activities, and related accessory structures. The proposed development—consisting of a primary dwelling, farm building, established agriculture, and related uses—is consistent with the lot’s designated zoning. The development adheres to required building and shoreline setbacks and does not result in greater density than what is allowed under the A-20a zoning designation.

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

The General Plan emphasizes sustainable agriculture, protection of natural resources, and rural community vitality. By converting a 2.50-acre previously cultivated parcel into diversified commercial agriculture—cultivating kalo, cacao, and honey—while maintaining open space, the project supports the County’s goals for local food self-sufficiency, economic diversification, and environmental stewardship. Under the Hāmākua Community Development Plan, which channels General Plan objectives into region-specific policies, the project advances agricultural land use, protects scenic and coastal resources, and supports community-based economic resilience. HCDP policies encouraging support for diversified agriculture, protection of visual corridors, and stewardship of cultural and natural resources are directly addressed via the farming operations, careful siting away from protected viewplanes, and minimal disturbance to native vegetation.

Per the Zoning Code (Chapter 25), the site’s Ag-20a classification permits farm dwellings and agricultural structures 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 HCDP'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 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: In accordance with the guidance of the Public Access Shoreline Hawai'i (PASH) and *Ka Pa'akai o ka 'Āina* decisions, the applicant undertook a reasonable investigation into the presence of traditional and customary native Hawaiian rights and practices on the subject parcel. This included consultation with neighboring landowners, site observations over an extended period, and a review of the parcel's land use history. No formal Cultural Impact Assessment (CIA) was conducted, but the information gathered was sufficient to evaluate the potential for customary practices on-site. The application was also submitted to the State Historic Preservation Division (SHPD) for review, and no historic or cultural resources were identified or documented.

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

The subject property, located in Ninole, was historically used for sugarcane cultivation and has been extensively cleared and graded. It is currently maintained as mowed pasture and managed for future agricultural use. The SHPD issued a determination of “No historic properties affected,” and the site contains no known archaeological sites, burial grounds, or structures of cultural or historical significance. Additionally, no traditional or customary practices, such as fishing, gathering, or ceremonial use, are known to occur on the property. The shoreline is bordered by a steep, approximately 200-foot-high pali, which precludes physical access to the coast, further reducing the likelihood of historical or ongoing cultural use.

Possible adverse effects or impairment of valued resources: Because no valued cultural or historical resources or customary practices have been identified on the subject parcel, and no shoreline access currently exists due to the extreme terrain, the project is not anticipated to cause any adverse effect or impairment to such resources. The proposed structures are located outside of the Conservation District and are set back from the shoreline and perennial streams. Furthermore, the project will not interfere with lateral shoreline access or diminish opportunities for traditional practices in the broader region.

Feasible actions to protect native Hawaiian rights:

To the extent feasible, the proposed development includes safeguards to protect any native Hawaiian rights, should they be found to exist. The applicant has committed to halting all ground-disturbing work in the event that cultural or archaeological materials—including lava tube openings, artifacts, or human remains—are encountered during construction, and to promptly notifying SHPD for further guidance. Additionally, the majority of the site’s vegetated stream corridors and the shoreline pali will remain undisturbed, preserving natural features and any latent cultural value they may hold. Through these measures and continued adherence to applicable state and county regulations, the project ensures that native Hawaiian rights will be reasonably protected.

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, including, but not limited to State Department of Health approval for the individual wastewater system, and the County of Hawaii Department of Water Supply for required water system improvements.
3. Other than the proposed project as described in this permit, no further work is permitted under this approval.
4. Approval of the proposed project shall be conducted in a manner that is substantially representative of plans and details as contained within the SMA Application dated January 14, 2025, and representations made to the Windward Planning Commission.
5. Construction of the proposed development as represented in the submitted application shall be completed within five (5) years from the effective date of this permit.
6. A construction barrier shall be erected along the entire length of the 40-foot shoreline setback line prior to the commencement of land altering and construction activities and shall remain in place until final inspection has been granted by the Building Division for all structures.

7. Prior to construction of the proposed development, the Applicant shall sign the County Department of Water Supply's Policy and Conditions for Water Service or "Out-of-Bounds Agreement" stating the Applicant is responsible for the installation and maintenance of the Applicants waterline from the meter to the subject parcel as well as obtaining any necessary permits, easements, or other access for the Applicants waterline.
8. The Applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing meter to be inspected and approved by the Department of Water Supply.
9. The Applicant shall be responsible for the relocation and adjustment of the Department of Water Supply's affected water system facilities, if required.
10. The existing water meter is only permitted to service the farm dwelling. Potable water necessary for the farm building shall be secured via a private water system and shall not share the existing water meter.
11. 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.
12. The applicant shall comply with Chapter 27 - Flood Control, of the Hawai'i County Code.
13. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
14. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
15. The Applicant is responsible for ensuring the existing Individual Wastewater System (IWS) meets with the requirements of the Department of Health, including, but not limited to any required upgrades to the existing system necessary to accommodate the additional development and uses.
16. 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.

17. 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.
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.