

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

ATLAS SURREY LLC
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2025-000074)

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 **after-the-fact construction of a one-story, approximately 1,809-square-foot single-family dwelling that includes five separate structures, and a 532-square-foot detached garage, a water tank, pump house, and related improvements on a 6.37-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 for the after-the-fact (as-built) approval of a residential and agricultural development by Atlas Surrey LLC located at 34-1230 Hawai'i Belt Road, North Hilo, Hawai'i. The residential complex includes: A main dwelling with approximately 256 sq. ft. of interior living space and 500 sq. ft. of lanai/storage, two (2) detached trailered bedrooms, each with around 120 sq. ft. of interior space and 100 sq. ft. of lanai, a detached laundry/bath structure of 150 sq. ft. interior and 85 sq. ft. lanai space, a detached garage with 435 sq. ft. of enclosed space and 85 sq. ft. of lanai, and a rainwater catchment tank, pump house, and associated infrastructure. Besides the ongoing farming activities, no additional uses other than the dwelling and related accessory improvements are proposed for this project. Due to the location of the roof eaves of the main dwelling being approximately 38 feet from the coastal pali (i.e., shoreline), the applicant will be required to remove the portions of eaves that lie within the shoreline setback area; this will be added as a condition of approval.

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 set forth in Hawai‘i Revised Statutes (HRS) §205A-26(2)(A), the proposed as-built development is not anticipated to have any substantial adverse environmental or ecological effect. The project is limited in scale, occupies a previously disturbed area totaling approximately 0.5 acres, and is situated atop a 200-foot-high sea cliff, effectively removing it from direct coastal influence or impact to marine resources. The development does not involve grading, shoreline alteration, or removal of native vegetation, and it incorporates best management practices such as rainwater catchment, on-site wastewater treatment, and permeable surfaces to manage runoff. No rare, threatened, or endangered species or sensitive habitats were identified on the site, and no archaeological or cultural resources are present. The project maintains consistency with the Special Management Area (SMA) objectives, and any minor environmental effects are minimized to the extent practicable and are clearly outweighed by the public interest in ensuring compliance, health and safety, and agricultural productivity.

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:

Protection of Coastal Resources

The development is located well inland from the shoreline, atop a ~200-foot-high sea cliff and does not involve any alteration to the shoreline or nearshore coastal resources. As such, it poses no threat to public beach access, marine ecosystems, or coastal processes.

Minimization of Adverse Environmental or Ecological Effects

The as-built improvements are limited in scope and sited within a previously cleared area, minimizing land disturbance. There are no endangered species or sensitive habitats on the property, and stormwater runoff is controlled through permeable surfaces and vegetative buffers, preventing any discharge to coastal waters.

Consistency with the County General Plan and Zoning

The property is zoned Agricultural 20-acre (A-20a) and used accordingly, with a lychee orchard and low-impact residential structures. The project aligns with both the County General Plan’s and Hāmākua Community Development Plan’s support for agricultural sustainability and rural character.

Preservation of Cultural and Historic Resources

A literature review by the applicant on cultural and archaeological resources revealed no known historic sites, cultural practices, or traditional uses associated with the property. No archaeological features were discovered, and appropriate protocols will be followed in the event of inadvertent finds.

Protection of Public Shoreline Access and Scenic Resources

The project does not interfere with any public shoreline access, trails, or view corridors. The sea cliff naturally limits shoreline access, and the development is not visible from public roads or coastal recreation areas, thereby preserving scenic integrity.

Sustainable Land Use and Water Resources

The project utilizes a rainwater catchment system and an individual wastewater system in accordance with the Department of Health guidance. These systems reduce demand on public infrastructure and are appropriate for the rural setting.

Consistency with SMA Rules (Planning Commission Rule No. 9)

The project adheres to the intent and purpose of the SMA rules by supporting agricultural use, maintaining a low environmental footprint, and ensuring that after-the-fact permitting brings the site into full compliance with County and State regulations.

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 Important Agricultural Land (IAL), which supports and encourages agricultural use and related rural development. 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 as-built development—consisting of a small-scale primary dwelling, detached accessory structures, and a lychee orchard—is consistent with the lot's designated zoning and use. 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 as-built development is consistent with the County of Hawai'i General Plan, the Hāmākua Community Development Plan (HCDP), the County Zoning Code (Chapter 25), and other applicable ordinances. The parcel is zoned Agricultural 20-acre (A-20a) under the County Zoning Code and designated as State Land Use Agricultural District, with a narrow strip of Conservation (G) land along the makai cliff. The as-built improvements, which include a modest primary dwelling and accessory agricultural structures supporting a lychee orchard, are explicitly permitted under the A-20a zoning designation, aligning with the purpose and intent of Section 25-5-72, which allows for dwellings and agricultural uses on agriculturally zoned land, provided that the activity supports agricultural viability.

The project also aligns with several principles and action strategies outlined in the Hāmākua Community Development Plan (HCDP). Specifically, the development supports Policy 1 under Objective 1 of the Agricultural Development section, which encourages the preservation and use of prime agricultural lands for productive purposes. The presence of the lychee orchard directly furthers this goal by contributing to small-scale agricultural activity in the region. Additionally, the project maintains the rural character of the Hāmākua Coast, as outlined in Objective 2 of the Rural Development section, which promotes low-density residential use that is compatible with agriculture and natural systems. The use of rainwater catchment and on-site wastewater treatment is also consistent with infrastructure strategies in the HCDP that call for sustainable resource use in areas outside public utility service.

Moreover, the project does not conflict with any environmental or shoreline protection objectives established in the General Plan, given its location well inland from the shoreline atop a 200-foot sea cliff, and its lack of impact on coastal access or view planes. Overall, the proposed development complies with applicable land use designations and advances the policy goals of rural sustainability, agricultural productivity, and environmental stewardship as articulated in the County's long-range planning frameworks.

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 part of the SMA application process, the applicant conducted a literature review of cultural and archaeological resources to assess the presence of valued cultural, historical, and natural resources on or near the project site. This review involved consulting the State Historic Preservation Division (SHPD) database, available GIS tools, and regional studies. No known traditional cultural properties, historic sites, or ongoing customary practices were identified within the boundaries of the subject parcel. Given the site’s elevation (~220 feet), steep topography (200-foot sea cliff), and history of agricultural and residential use, the area was assessed to have low potential for cultural resource significance. Staff notes that a request for review under HRS. Ch. 6E-42 was submitted to SHPD; to date no response has been provided.

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

No cultural or historical resources were documented on the property, and no oral histories or community interviews indicated the presence of native Hawaiian practices or features on the parcel. The site does not fall within a designated preservation or cultural overlay zone, nor does it intersect any known access routes to traditional gathering areas, fishing grounds, or ceremonial sites. Natural resources consist primarily of non-native vegetation and cultivated lychee trees. The parcel does not host endangered flora or fauna, nor is it within a critical habitat or conservation corridor.

Possible adverse effects or impairment of valued resources: Because no cultural or historic resources have been identified on the property, and because the as-built development is confined to a small portion of the previously disturbed parcel, there is no known adverse impact to valued cultural or natural resources. The development does not restrict access to shoreline areas (which are naturally inaccessible due to the sea cliff),

and there is no evidence that the project impairs customary or traditional native Hawaiian rights, practices, or resource gathering.

Feasible actions to protect native Hawaiian rights: The applicant acknowledges that if any inadvertent discoveries of cultural resources, human remains, or evidence of traditional practices are encountered during future ground-disturbing activities, all work will cease immediately, and the SHPD will be notified in accordance with Hawai'i Revised Statutes Chapter 6E. This commitment ensures that, to the extent feasible, any existing or future native Hawaiian rights will be reasonably protected. Additionally, the current land use, focused on agriculture and rural homesteading, is consistent with the preservation of the broader cultural landscape and does not preclude the exercise of native rights in the region.

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 wastewater system, and the County of Hawaii Department of Public Works building and engineering permits as required.

3. Other than the proposed project as described in this permit, no further work is permitted under this approval.
4. Approval of the after-the-fact 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 February 27, 2025, and representations made to the Windward Planning Commission.
5. Prior to the issuance of any required Department of Public Works Building Permits for the after-the-fact development, the applicant shall permanently remove all portions of the roof eaves of the main dwelling structure that extend into the shoreline setback area and shall provide evidence of its removal to the Planning Director.
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. Any request to rent the property as a short term vacation rental must comply with County Code and the Rules and Regulations of the Planning Department, including proper permitting and approvals.
11. 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.

12. 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.
13. 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.
14. 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.

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.