

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

MICHAEL STEHLE AND LISA DOGETT-STEHLE
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA-2025-000081)

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 three-story, approximately 3,500 square-foot (sf) single-family residence with three bedrooms, three and a half bathrooms, and related improvements on a 11,921-square foot 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 three-story, approximately 3,500-square-foot single-family dwelling with three bedrooms and three and a half bathrooms on a 11,921-square foot parcel located in Puna, Hawai‘i. The dwelling will include approximately 823 square feet of lanai (patio) areas and a 480-square-foot garage, totaling approximately 1,303 square feet of accessory area. Related site improvements include installation of 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. No additional uses other than the dwelling and related accessory improvements are proposed for this project. The proposed building site will occupy most of the property area and is sited as far mauka as possible and a minimum of 40-feet inland from the edge of an approximately 60-foot-high coastal sea pali to mitigate potential coastal hazards and minimize environmental impact. The project's construction cost is estimated at approximately \$900,000, with construction anticipated to take roughly 12 months following permit approvals.

The project utilizes smaller side yard and front yard setbacks than typically required by the zoning code. This adjustment was made due to the actual smaller size of the lot compared to what is recorded. The Planning Director has reviewed and approved the use of these smaller setbacks, acknowledging the unique constraints of the property.

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 areas 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 a minimum of 40 feet from the coastal pali, 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. Although electricity is offered to the area, the applicant intends to utilize roof-top photovoltaic panels for all household electricity, as well as the use of a solar water heater for the property to be self-sustaining and further minimizing the impact on the environment. 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 a residential structure 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 the shoreline setback area and all development has been sited a minimum of 40 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. Kehena Black Sand Beach, approximately 0.3 miles north 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. 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 Kahena Black Sand Beach located well north of the project area. Additionally, the project site is blocked via landforms and vegetation such that no views from the nearest highway exist or will be impacted by the proposed project. The closest highway to the project site is the Pahoa-Kalapana Highway and is approximately 8,802-feet away.

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. Although the property is situated roughly 60-feet above mean sea level on a lava -rock cliff, the property remains within the County of Hawai‘i Civil Defense tsunami evacuation zone. However, a warning siren is located within 0.5 miles of the property. 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, Puna Community Development Plan (PCDP), Zoning Code, and other applicable ordinances. The County General Plan Land Use Pattern Allocation Guide (LUPAG) designates the parcel as Open (ope). Although this category is primarily intended for

shoreline parks and other recreational open space, the map is a guide; many adjacent open-designated lots already support single-family dwellings. By situating the new home on the mauka (inland) half of the lot, roughly 40 feet landward of the certified shoreline, the project will retain the coastal open-space character while satisfying the land-use goals, policies and standards of the General Plan.

The construction phase will generate short-term jobs for local contractors and stimulate purchases from on-island suppliers, with longer-term economic benefits through additional property-tax revenue.

Zoning Code

The subject property and all surrounding parcels are zoned Agricultural 1-acre (A-1a). Neighboring lots—generally 8,000-11,000 sq ft—are developed with, or entitled for, single-family dwellings; the proposed house therefore matches the established land-use intensity and neighborhood character.

Puna Community Development Plan (PCDP)

Kehena Beach Estates lies within the Lower Puna coastal area addressed by the PCDP. Relevant goals include reducing exposure to shoreline hazards and preserving Puna’s rural coastal character. The PCDP also highlights the area’s scenic and open-space character and unobstructed shoreline access as key community values. By keeping all improvements outside the shoreline setback, limiting the building dimensions (≈30 ft height), and using native/non-invasive landscaping, the project advances these PCDP objectives while avoiding impacts to biological, cultural, and scenic shoreline resources.

Conclusion

The residence and associated site work are compatible with existing single-family uses, respect coastal and environmental constraints, and support community economic vitality. Accordingly, the project is in harmony with the General Plan, PCDP, County Zoning Code, and other applicable regulations.

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 application was submitted with the project details and development application to the State Historic Preservation Division (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 previous land clearing in the late 1950's indicate 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 on the subject property, which was previously cleared, but the coastal strip fronting Kehena continues to support intermittent subsistence fishing, limu gathering, and recreation. Pockets of native vegetation—hala, milo, and pāpala—remain mauka of the certified shoreline, and the Puna Community Development Plan highlights the area's scenic open-space character and unobstructed shoreline access as key community values.

No floral or faunal species listed as threatened, endangered, or proposed for listing under state or federal statutes were observed on site, nor were any plants typically gathered for cultural purposes identified within the project area.

Possible adverse effects or impairment of valued resources: Ground alteration will remove most existing vegetation, but none of the species present is known to be culturally important. Although the likelihood of uncovering archaeological remains is low, the applicant will follow State Historic Preservation Division (SHPD) protocols for inadvertent finds. Construction activities could temporarily raise noise, dust, and sediment levels, reducing near-shore water quality that supports fishing and gathering; moreover, access controls installed seaward of the dwelling could impede lateral shoreline passage. Finally, introducing invasive landscaping species or excessive night-lighting would erode the area's natural character.

Feasible actions to protect native Hawaiian rights: The proposed single-family residence is sited mauka of the certified shoreline and entirely outside the shoreline setback, preserving an uninterrupted public-access corridor along the makai portion of the lot and ensuring that traditional and customary Native-Hawaiian gathering or access

rights remain unaffected. Construction Best-Management Practices— including phased earthwork scheduled outside peak rainfall months, silt fencing, and turbidity curtains— will control sediment and runoff, while a cultural monitor will be on-site during initial grubbing to halt work and consult SHPD immediately should any iwi kūpuna or other cultural, historical, or natural resources be encountered. Landscaping will rely on endemic and Polynesian-introduced species to prevent invasive spread, and all exterior lighting will comply with dark-sky standards; additional lighting conditions of approval specifically protect endangered and threatened seabirds such as the Newell’s shearwater and Hawaiian petrel. Moreover, a recorded covenant guarantees that shoreline access remains unobstructed and that the small county shoreline park north of the project site continues to provide open public use and resource access. Collectively, these measures satisfy the *Ka Pa‘akai* three-part test, uphold the protections affirmed in *PASH*, and demonstrate that the development will reasonably safeguard valued cultural practices and natural resources.

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 May 9, 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. The method of sewage disposal shall meet with the requirements of the Department of Health.
 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. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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.