

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

PUNALEI MAKAI LIVING TRUST
AMEND SPECIAL MANAGEMENT AREA USE PERMIT PL-SMA-2023-000026
(PL-SMA-2026-000093)

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 amend Special Management Area Use Permit No. PL-SMA-2023-000026 to increase the size of the first farm dwelling from two (2) to four (4) bedrooms, add a family room and bathroom, and enlarge the septic system to accommodate additional bedrooms on a 9.513-acre shoreline parcel within the Special Management Area 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 SMA Use Permit to amend a previously approved amended SMA Use Permit (PL-SMA-2024-000054) that included the size increase of the single-family dwelling, to change the style of roof, and to construct a rock wall and gates on 9.51 acres of land situated within the Special Management Area. The currently proposed amendment consists of the addition of two (2) bedrooms, one (1) family room, and one (1) bathroom to the approved dwelling. As amended, the residence will contain a total of four (4) bedrooms and remain a single-story structure. The dwelling will have a total interior floor area of approximately 1,637 square feet and 349 square feet of accessory area. Construction will consist of a concrete slab foundation, concrete exterior walls at the main floor level, wood interior wall framing, and a wood-framed hip roof with metal roofing. The addition will be connected to the approved dwelling by an adjoining roof with a shared gutter. The residence will remain approximately 16 feet in height and will be located approximately 230 feet from the shoreline. No changes are proposed to the

approved building location, shoreline setback, or other setbacks. The septic system servicing the residence will also be enlarged to accommodate the new bedroom additions.

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 Hawai'i 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.

The proposed first farm dwelling is considered a permitted use within the County's zoning agricultural district. Staff notes that the first farm dwelling is an approved use when the subdivision/parcel was created prior to 1976 as was this parcel (Grant 4569). The subject parcel was used for over a century for sugarcane agriculture, and no native vegetation is present as the land has been altered by historic land disturbance for agriculture a minor single-family development which is located adjacent to Old Māmalahoa Highway. No rare species or forest resources would be affected by the proposed project as none were observed. A home on this parcel would have no adverse effect on natural beauty and scenic view planes since it is low profile, and vegetation aids to hide the proposed project from Highway 19 (Hawai'i Belt Road). No historic properties are affected, and there is no existing or historic shoreline/fishing access located on the subject parcel.

The southern property boundary is demarcated by the Waipunalei Stream which runs parallel to Jardine Road located mauka of the highway and subject parcel. Staff notes that there were no drainage issues or recommended setbacks because of the stream, however, the applicant has cited the proposed development is a considerable distance from the southern property line where the stream is located. In terms of beach protection, the applicant proposed to exceed the required 40-foot shoreline setback by locating the dwelling at least 230-feet from the top of pali and as such the proposed development would not affect any coastal resources nor adversely affect public use and recreation in this area.

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 construct two (2) additional bedrooms, a family room and a bathroom within an existing first farm dwelling, and related on 9.513-acres of land 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 following factors of a proposal, although not limited to same, may constitute a substantial adverse effect on the environment when the proposed use, activity, or operation:

Involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans: No valuable natural or cultural resources would be committed or lost. Several common native plants may be present, especially near the cliffs where there will be no disturbance. No native

ecosystems or valuable flora or fauna would be adversely affected. The State Historic Preservation Division (SHPD) has reviewed the application under Hawai'i Revised Statutes (HRS) Ch. 6E-42 and determined that no historic properties affected in a letter dated April 21, 2023 to the Planning Department. No valuable cultural resources and practices such as shoreline access, fishing, gathering, hunting, or access to ceremonial sites would be adversely affected by the proposed project as none have been identified.

Curtails the range of beneficial uses of the environment: There has historically been no shoreline access through this parcel. That will continue. The adjacent property to the south is owned by the County of Hawai'i and offers shoreline access. Additionally, the State of Hawai'i owns a narrow parcel that separates this property and adjacent properties to the north from the shoreline. Access to the shoreline and ocean can be gained via the Laupāhoehoe Point Park located 3000-feet south of the project parcel.

Substantially affects the economic or social welfare and activities of the community, County, or State: The proposed construction and occupation of a first farm dwelling would be in balance with the natural, cultural, and social environment of the County, would create temporary construction jobs for residents, and would indirectly boost the economy through construction industry purchases from local suppliers. As such the proposed project would not have any substantial effect on the economic or social welfare of the County or State.

Involves substantial secondary impacts, such as population changes and effects on public facilities: While the addition of two (2) bedrooms to a first farm dwelling could increase population in this area, it does not constitute a secondary or cumulative impact on the area as this is a large parcel, and similar development (dwellings) is located throughout the area.

In itself has no substantial adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions: The adverse effects of building additional bedrooms for a first farm dwelling are limited to very minor and temporary disturbance to traffic, air quality, noise, and

visual quality during construction. This area is isolated from sweeping or coastal views by heavy vegetation along Highway 19, and there are no traffic issues associated with the highway access point, which provides access for a few properties and therefore will generate negligible traffic increases. There are no substantial government or private projects in construction or planning in the area, and no accumulation of adverse construction effects would be expected. Other than the precautions for preventing adverse effects during construction listed above, no special mitigation measures will be required for this proposed project.

Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat: The site has not been surveyed for threatened and endangered plants, however, none were observed or recorded by the applicant. Other than Hawaiian hoary bats and Hawaiian hawks, island wide-ranging species will experience no adverse impacts due to mitigation through seasonal timing of vegetation removal and seasonal hawk surveys as needed. There are no rare, threatened, or endangered faunal species known to exist on or near the property, and none would be affected by any project activities. Only very minor exterior lighting is planned, and it will be down shielded. This will reduce the risk that transiting threatened or endangered seabirds may be attracted to and then disoriented by the lighting.

Detrimentially affects air or water quality or ambient noise levels: No substantial effects to air, water, or ambient noise would occur from the proposed project. Brief, temporary effects that are common to all construction projects (i.e., noise, dust) would occur during construction and would be mitigated. The context of the property's location, with limited residences, no parks, or other sensitive uses nearby, will help avoid noise impacts. Erosion and sedimentation impacts will be avoided by implementation of Best Management Practices during grading, which will occur in a very limited area and at a significant distance from the shoreline.

Affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal water: The proposed home site is not located in a flood zone, nor would it

impact drainage areas like are located along the southern property boundary and the Waipunalei Stream. In general, geologic conditions do not impose undue constraints on the proposed action, as volcanic hazard is low, and the home will meet or exceed all seismic hazard standards. The addition would be set back a minimum of 230 feet from the edge of the pali which will mitigate the hazard associated with predicted sea level rise or the episodic retreat of the shoreline pali.

Is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS:

The proposed land use complies with provisions and guidelines contained in Chapter 205A, HRS, Coastal Zone Management and SMA. The proposed use would be consistent with Chapter 205A because it would not affect public access to recreational areas, historic resources, scenic and open space resources, coastal ecosystems, economic uses, or coastal hazards, and would not result in any substantial adverse impact on the surrounding environment. The house site is set a significant distance from the pali and will not restrict any shoreline uses such as fishing or water sports. Access to the shoreline through the parcel is not established, but the public can access the shoreline via the nearby Laupāhoehoe Point Park or through the County parcel to the south. View planes towards the property will not be adversely impacted, as the home site is not visible from the highway, accessible shorelines, or other public vantage points; however, the applicant will be planting landscaping to further hide development from the road. The property contains mostly non-native grasses and bushes – some of which will be removed by the applicant. The property is not situated over any natural drainage system or water feature that would flow into the nearby coastal ecosystem other than the Waipunalei Stream located on the south side of the parcel, and no floodplains are present in the affected area. In terms of beach protection, construction is set back from the top of pali (i.e., shoreline location) at least 100-feet and would not affect any beaches nor adversely affect public use and recreation of the shoreline in this area. With implementation of Best Management Practices associated with grading permits, there should be no impacts on marine

resources.

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 both Important Agriculture Lands (ial) which allows for "*lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors*", and Open (ope), which allows for "*Parks and other recreational areas, historic sites, and open shoreline areas*". The proposed development is consistent with the General Plan LUPAG Map designation as it will complement the goals, policies, and standards of the Land Use Elements of the General Plan. The proposed action is in balance with the natural, cultural, and social environment of the County, and it will create temporary construction jobs for local residents and indirectly affect the economy through construction industry purchases from local suppliers. The dwellings and associated improvements would be compatible with the existing rural single-family homes and farming, grazing, and recreational uses in the area surrounding the project parcel.

Additionally, the entire property is zoned by the County of Hawai'i as within the Agricultural District, minimum lot size of 20 acres (A-20a). No aspect of the project appears to be inconsistent with the County's Agricultural zoning designation since a "*dwelling, single-family*" is a permitted use identified in Section 25-5-70 of the Hawai'i County Code (HCC).

Lastly, the proposed development is consistent with the Hāmākua Community Development Plan (HCDP). The HCDP was developed under the framework of the February 2005 County of Hawai'i General Plan and was adopted in 2018 via Ordinance 2018-078 by the Hawai'i County Planning Commission. While the HCDP does not list specific land uses for the subject parcel, the

proposed residence does align with certain priorities of the natural and cultural resources, and community infrastructure sections, such as: protecting coastal areas from development, protecting and preserving coastal view planes, preserving historic resources, and concentrating future development in an existing subdivision. Based on this review, the proposed dwellings and related uses would be compatible with the existing rural single-family residences and farm dwellings, farming, grazing, and recreational uses in the project region. Therefore, the project will not conflict with goals and policies of either the State Plan or the County General Plan.

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 project was submitted to the State Historic Preservation Division (SHPD) for review and recommendations under Ch. 6E-42. The applicant did not conduct any additional surveys as the subject parcel has been used for the cultivation of sugar cane for over 100 years before that use was abandoned.

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

Based on the previous land disturbance from sugar cane cultivation (which was significant), the extent and location of the proposed project, and lack of public access, it was determined that there would be no adverse effects to historic sites. No valuable cultural resources and practices such as shoreline access, fishing, gathering, hunting, or access to ceremonial sites have been established, and as such would not be adversely affected in any way by the proposed project.

Based on the nature of development, and the current use of the parcel, there does not appear to be any potential adverse impacts to traditional and customary practices in the area.

No floral or faunal species listed as threatened, endangered, or proposed for listing under the federal or state endangered species statutes were identified on the site. Additionally, no species used for cultural gathering purposes were identified within the project area.

Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration, however, there is no evidence that the flora in the project area is particularly desired or used for cultural practices. Archaeological remains could inadvertently be uncovered during construction activities; however, the parcel has been impacted by past grading and grubbing under sugar cane cultivation and as such, none are expected to be found.

Lastly, there may be common short-term impacts (i.e., noise, dust) from the construction activities for the development as well as the new proposed structures, however best management practices will be in place to mitigate these short-term impacts which will cease at the completion of the project.

Feasible actions to protect native Hawaiian rights: The proposed development will not restrict access to, and the use of natural resources in this area. A condition of approval has also been added to protect any unidentified cultural, historical, and natural resources in the event any are encountered during construction. To the extent that traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights.

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

the affected agencies.

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

1. The applicant(s), its successor(s), or assign(s) (applicant) shall be responsible for complying with all stated conditions of approval.
2. The Applicant shall secure all necessary approvals and permits from other affected Federal, State, and County agencies as necessary to comply with all applicable laws and regulations.
3. Construction of the addition to the first farm dwelling 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 March 28, 2026, and representations made to the Windward Planning Commission, including but not limited to the structure height and distance the structures are setback from the top of the pali.
4. Construction of the proposed development shall be completed within five (5) years from the effective date of this amended permit.
5. The property shall not be used, offered, rented, or advertised for un-hosted transient occupancy or un-hosted short-term rental use, including as a Short-Term Vacation Rental, Transient Vacation Rental, or successor term, as defined and regulated under Chapter 25 and Chapter 6, Hawai'i County Code, as amended. This includes rental or occupancy of the dwellings for any period less than the minimum one hundred and eighty days as defined by State Law and County Code.
6. A National Pollutant Discharge Elimination System (NPDES) permit and an Underground Injection Control (UIC) permit, if required, shall be secured from the State Department of Health prior to the commencement of construction activities.
7. 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.

8. The Applicant shall comply with Chapter 27 - Flood Control, of the Hawai'i County Code.
9. All earthwork and grading shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
10. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
11. The method of sewage disposal shall meet the requirements of the Department of Health.
12. The Applicant shall ensure that excessive siltation and turbidity of stream and ocean waters are contained or otherwise minimized through the use of silt containment devices or barriers, or other approved Best Management Practices as approved by the Planning Director.
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. 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.
15. 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).
 - 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.
16. 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.
17. 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.