



## County of Hawai'i

### LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

OCT 15 2014

Sidney M. Fuke, Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

Special Management Area Use Permit (SMA 14-000057)

Applicant: One Puakō Bay Associates, LLC

Request: Proposed 7-Lot Subdivision and Related Activities and Improvements

Tax Map Key: 6-9-002:001, 002 & 030

The Leeward Planning Commission, at its duly held public hearing on September 18, 2014, voted to approve the above-referenced request to allow the development of a 7-lot single family residential subdivision and related activities and improvements on approximately 6.92-acres of land situated within the SMA. The project site is situated on the makai side of Puakō Beach Drive, adjacent to and west (Kona side) of the Puakō Boat Ramp in Lālāmilo, South Kohala, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval of this permit.
2. The required water commitment for each lot shall be secured from the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within two (2) years from the effective date of this permit. The number of lots to be subdivided shall not exceed the number of water commitments formally issued by the Department of Water Supply.
3. Final Subdivision Approval shall be secured within five (5) years from the effective date of this permit.

4. All vertical structures shall be setback a minimum of sixty (60) feet from the August 1, 2014 pending certified shoreline or, in its absence, an updated certification prior to the issuance of any land disturbance permit. This restriction shall not apply to non-vertical structures such as a swimming pool, landscaping irrigation lines, and their corresponding underground utility lines, provided that in no event shall any of these improvements occur within 40-feet of the certified shoreline.
5. All structures shall be limited to a maximum height of thirty-five (35) feet as defined by Chapter 25, Hawai'i County Code.
6. Restrictive covenants in the deeds of all the proposed lots within the subject property shall give notice that the terms of this permit restricts the use of the proposed lots for only one single-family residential dwelling and prohibits the establishment of timeshares. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
7. The applicant shall continue to comply with the approved (revised) shoreline public access plan dated October 25, 2011 that provides a lateral shoreline public access walking trail from the Puakō Boat Ramp area to the western boundary of the subject property.
8. The applicant shall continue to work with the State Division of Boating and Ocean Recreation on improving the boat ramp parking area and other related improvements to enhance access to the shoreline within this particular area of Puakō. The improvements at the Puakō Boat Ramp will negate the need for a mauka-makai public access through the project site.
9. Access to Puakō Beach Drive shall meet with the approval of the Department of Public Works and conform to Chapter 22 (Streets) of the Hawai'i County Code.
10. Any common vehicular security gate shall set back from Puakō Beach Road to provide gate swing and vehicular queue outside of the County road traveled way.

11. All fill areas on the lots shall be made to drain away from the ocean. Retaining walls to support these fill areas shall be constructed along the lots facing the shoreline.
12. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties or the shoreline setback area defined in Condition No. 4.
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 in the State of Hawai'i.
14. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
15. Each lot owner shall install an anaerobic or comparable individual wastewater system meeting with the approval of the Department of Health. Each owner shall be required to enter into a maintenance contract with a qualified operator for the perpetual maintenance and repair of the individual wastewater system. This condition shall be articulated as a covenant(s) within the deeds for all lots within this subdivision.
16. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
17. The applicant shall comply in all relevant respects with Chapter 27, Hawai'i County Code. The applicant shall include a covenant in the deed or deeds of the appropriate lot or lots that require maintenance of the drainage channel, keeping it constantly free of unwanted vegetation and debris, and maintaining the desired vegetation to reduce the erosion potential. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.

18. Should any undiscovered remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
19. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
20. 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.

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Brandi K. Beaudet, Chairman  
Leeward Planning Commission

LOnePuakoBaysma14-057lpc

Enclosure: PC Findings Report

cc: One Puakō Bay Associates, LLC  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Kona  
Department of Land & Natural Resources - HPD  
Subdivision Section  
Ms. April Surprenant  
Mr. Gilbert Bailado

**COUNTY OF HAWAII**  
**PLANNING COMMISSION FINDINGS**

**ONE PUAKŌ BAY ASSOCIATES, LLC**  
**SPECIAL MANAGEMENT AREA USE PERMIT (SMA 14-000057)**

The applicant is requesting a Special Management Area Use Permit to allow the consolidation of three (3) existing lots and its re-subdivision into a 7-lot gated single-family residential subdivision with its related improvements on approximately 6.92 acres of land situated within the SMA and located on the makai side of Puakō Beach Drive, adjacent to and west (Kona side) of the Puakō Boat Ramp in Lālāmilo, South Kohala, Hawai'i, on TMK's: 6-9-002: 001, 002 & 030.

The lots will range in size from approximately 27,810 to 66,796 square feet. The improvements proposed are water and drainage system improvements, concrete driveway and retaining wall improvements, landscaping and the subsequent development of one single family dwelling on each lot. The applicant has already installed landscaping and has provided a lateral shoreline access within the shoreline setback area under previous permitting actions.

A requirement of the Special Management Area (SMA) Use Permit application is that a shoreline survey be submitted when the parcel abuts the shoreline, except as may be waived by the Planning Director when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline. The Planning Director agreed to waive the need for a current certified shoreline survey provided that the applicant adheres to a minimum shoreline setback of 60 feet from the July 1, 2011 certified shoreline survey for all vertical structures. The applicant confirmed this agreement through its response to a comment letter from DLNR-OCCL in which the applicant states that all residential structures will be mandated to respect a sixty (60) foot shoreline setback from the July 1, 2011 certified shoreline survey.

The applicant is requesting that irrigation lines that were allowed temporarily under a previous SMA minor permit be allowed to remain permanently in place. The Planning Director is recommending that the irrigation lines be immediately removed as originally anticipated and required by the SMA Minor permit (SMM-12-000204) issued in 2012 that allowed the temporary irrigation until landscaping improvements were required to be completed by February 13, 2013. The reason for immediate removal of the temporary irrigation system is that the certified shoreline is defined as "the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves." Permanent installation and operation of irrigation lines within the shoreline setback area can artificially enhance vegetative growth along the shoreline and thereby manipulate the edge of vegetative growth that may define the location of the certified shoreline. Therefore, the approval of this SMA Use Permit will not include or allow the installation of permanent irrigation within the shoreline setback area, with its immediate removal to be managed under the terms and conditions of the previously issued SMA Minor permit (SMM-12-000204).

**The proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.** In considering the significance of potential environmental effects, the Director shall consider the sum of those

effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action. Such adverse effect 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 elimination of planning options.

A "substantial adverse effect" is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. 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 through 10), it has been determined that the proposed development of a 7-lot subdivision and related improvements on the subject properties will not have a significant adverse environmental or ecological effect upon the Special Management Area.

The proposed development is located on properties zoned Resort-Hotel (V-1.25), which could allow for a dwelling unit or separate rentable unit for every 1,250 square feet of land area. The applicant is proposing to consolidate the three (3) existing lots and re-subdivide them into seven (7) lots that will each accommodate the construction of a single-family dwelling.

It should be noted that under Planning Commission Rule 9-10 (H) (9), a proposed use, activity or operation may constitute a substantial adverse effect if it affects an environmentally sensitive areas, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water. Although the property is located within Flood Zones VE, AE and AO, the proposed development must meet local flood control standards for construction within these flood zones. Any alterations within any Special Flood Hazard Area including, but not limited to, grading, driveways, buildings, fences, walls and gates are subject to the requirements of Chapter 27 – Flood Plain Management, of the Hawai'i County Code. Additionally, a portion of the former AO Zone has been altered and removed from the special flood area according to FEMA Letter of Map Revision (LOMR) Case Number 13-09-2122P effective December 16, 2013. As such, the proposed development will not create a substantial adverse effect on these environmentally sensitive areas.

**The proposed action will not create significant adverse impacts upon nearby and immediately adjacent properties.** The project site currently consists of three (3) contiguous and vacant parcels located makai of Puakō Beach Drive and west of the Puakō boat ramp. The combined project area is 6.92 acres in size. The site has been graded and landscaped with grass, trees, and shrubs. The applicant has also built rock walls and completed drainage improvements on-site.

The adjoining property to the east is the Puakō boat ramp, which is zoned Open and V-1.25 (Resort) and is owned by the State. To the west are lands zoned V-1.25. The adjacent lots to the west are vacant. The closest home is located about 400 feet to the west. Lands to the south across Puakō Beach Drive are zoned A-5a and are currently vacant of uses and structures. These lands are owned by the State and are within the State Land Use Conservation district. The Puakō Beach Condominium complex and the Puakō General Store are located approximately 1/2 mile west of the project site. Further to the west, most of the lots are zoned RS-10 and are developed with single-family homes. Therefore, the proposed 7-lot single family residential subdivision would not significantly detract from or conflict with existing uses within the immediately adjoining area, especially when considering that the existing Resort zoning of the

property could allow for a much higher residential density and range of uses than that proposed by the applicant.

Air quality in the area is predominantly affected by emissions from natural and vehicular sources. Both short-term air and noise quality impacts associated with the construction of the proposed improvements are expected during construction, especially during grubbing and grading activities. These impacts can be mitigated through the utilization of best management practices. Given the limited nature of the improvements, no significant long-term air and noise quality impacts are anticipated.

Given the above discussion and recommendation, the proposed action will not create significant adverse impacts upon nearby and immediately adjacent properties.

**The property is located within an area adequately served with essential services and facilities such as water, transportation systems and other utilities.**

Access to the project site is proposed from Puakō Beach Drive, which is a County-owned and maintained roadway with an approximately 18 to 20-foot pavement with inconsistent improved and unimproved paved/gravel/grass shoulders, all within a right-of-way of approximately 40 feet.

County water is available to the project site from an existing 12-inch waterline within Puakō Beach Drive fronting the properties. According to the Department of Water Supply (DWS), the current water availability allows for only one unit of water per existing lot of record. DWS is working with the applicant and Mauna Kea Properties to secure the four (4) additional water units necessary for this proposed subdivision. DWS is not able to issue a water commitment for additional water units until those water units are transferred from Mauna Kea Properties to the applicant. A condition of approval will be added to require the applicant to obtain the necessary water commitments to support this 7-lot subdivision from the Department of Water Supply within two years from the date of approval of this SMA Use Permit.

The property is located within the Critical Wastewater Disposal Area. All lots within this designated area are subject to the use of a septic tank system approved by the Department of Health. The Department of Land and Natural Resources-Division of Aquatic Resources (DLNR-DOA) commented that given the ever increasing threats to our highly valuable coral reefs, concerted efforts must be taken in this sensitive area to reduce/eliminate the potential deleterious effects of waste water (and agricultural) contamination of near shore waters. There are a number of ways to dispose of residential wastewater, without the use of septic systems. The applicant responded that such an alternative would be the use of an anaerobic individual wastewater system, which the applicant intends to require all lots owners to install. A condition of approval will be included within this approval recommendation reflecting this requirement.

**The proposed development is consistent with the County General Plan, Zoning Code and other applicable ordinances.** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for this area is Low Density Urban, which allows for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre. The proposed development is consistent with the General Plan LUPAG Map designation and will complement the goals, policies and standards of the Land Use and Single-Family Residential Elements of the General Plan.

The subject property is zoned Resort-Hotel – 1,250 square feet (V-1.25) by the County. Hotels, lodges, time-share units, and single-family, double-family and multiple-family dwellings



are listed as permitted uses within the Resort-Hotel zoning in the Zoning Code. Based on the size of the property and the current zoning, a total of 241 dwelling or hotel units could be proposed for development upon the property. The applicant is proposing to construct a single-family dwelling on each of the subdivided lots, for an overall total of seven (7) dwelling units. Therefore, the proposed development is consistent with the County General Plan and with County zoning requirements.

The South Kohala Community Development Plan was adopted by the Hawai'i County Council by Ordinance No. 08-159 on December 1, 2008. The property is located in Puakō and the plan has a specific section relating to this area. The proposed request is consistent with Strategy 1.2 (Mitigate the impacts of development within the Puakō Community), which states that "The low density, single family home character of Puakō makes this area a very desirable and pleasant place to live. Some privately owned land at the north end of Puakō Beach Drive is zoned for urban development. However, the overwhelming majority of residents in Puakō oppose any development in this area that is not in keeping with the existing character of the community. Multi-family, resort related, and multi-story structures should be prohibited." The subject property is zoned Resort-Hotel (V-1.25) by the County, with the owners proposing the construction of single-family dwellings on the project site that preserves the single family residential character within the Puakō community. Therefore, the proposed request is consistent with the objectives and goals of the South Kohala Community Development Plan.

**The proposed project is consistent with the objectives and policies as provided by Chapter 205A, 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, Hawaii Revised Statutes (HRS), and Special Management Area Rules and Regulations of the County of Hawai'i, 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. In reviewing the proposed development, it has been determined that it is consistent with the objectives and policies listed under Chapter 205A, HRS, which includes protecting and preserving recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, beach protection, and marine resources.

There are identified recreational resources along the Puakō and Waikoloa Coast. These include surfing, snorkeling, scuba diving, spearfishing, fishing, boating, and other similar types of activities. There are several identified public access areas to the shoreline near the subject property, including the adjacent property to the east and a lateral public access along the makai portion of the project site.

The proposed development will not substantially affect scenic vistas or viewplanes from the nearest State Highway nor have an adverse impact on coastal recreational or visual resources to the shoreline and coastal ecosystems. The project will not restrict access to coastal recreational resources along the shoreline. There is an existing mauka-makai shoreline public access immediately east of the site on the adjacent State-owned property (the Puakō boat ramp), and a lateral shoreline public access, which is part of the approved Shoreline Public Access Plan for the project site submitted in compliance with Condition No. 6 of SMA Use Permit No. 07-16. Additionally, the approved shoreline access plan reflects the applicant's maintenance of a portion of State-owned properties in the area.

**The development will to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist.** In view of the recent 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. These 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 following surveys were conducted previously for the subject properties:

- A study titled Archaeological Assessment Survey for Due Diligence, Puako Coastal Parcels, Land of Lālānilo, South Kohala District, Island of Hawai'i (March 2006) was prepared by Paul H. Rosendahl, Ph.D., Inc. (Appendix E of application). No archaeological sites were identified during the survey; the only remains identified were widely scattered and highly fragmented remains of former structures. The study recommended that the State Historic Preservation Division provide a formal determination of "no historic properties affected" for the entire project area. As of this writing, the DLNR-SHPD has not responded to this department's request for comments.

- A study titled A Survey of Botanical, Avian, and Mammalian Resources Conducted on TMK (3) 6-9-002: 01 & 02: Puakō Bay, South Kohala District, Island of Hawai'i (July 21, 2006) was prepared by Rana Productions, Ltd, and AECOS Consultants. The study concluded that the project will not impact any avian or mammalian species currently listed as endangered, threatened or currently proposed for listing under either the federal or state endangered species statutes. The results of the botanical survey indicate that there are no special concerns or legal constraints related to botanical resources in the project area. No plant species listed as endangered, threatened, or currently proposed for listing under either the federal or state endangered species statutes are identified on the project site.

- Two (2) studies dealing with the potential impact of the project on ocean water quality: Assessment of the Impact on Marine Water Chemistry Proposed Puako Residential Project, by Marine Research Consultants, and Assessment of the Impact of Groundwater of the Proposed Puako Residential Project, by Tom Nance Water Resource Engineering. The studies concluded that the project should have minimal impact on water quality from wastewater disposal or fertilization for landscaping.

The valuable cultural, historical, and natural resources found in the area: The shoreline and ocean area fronting the project site are used for fishing and gathering, and constitute a valuable natural resource. Both the botanical and archaeological studies revealed no endangered species or historical sites on the project site. However, a condition will be included to require the applicant to cease work and notify the DLNR-SHPD should any remains be discovered on the site, until given clearance to proceed by the DLNR-SHPD.

Possible adverse effects or impairment of valued resources: Native vegetation may be destroyed by ground alteration. There is no evidence that the flora in the area are particularly desired or used for cultural practices. According to the botanical and archaeological studies submitted by the applicant, the project will not adversely impact resources in the area.

Feasible actions to protect native Hawaiian rights: To the extent that traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights. The proposed project will not restrict the use of natural resources along the shoreline. Shoreline gathering rights are protected by the public access requirement. Other than

the use of the shoreline and ocean waters for fishing and gathering, there is no evidence of additional traditional and customary Native Hawaiian rights being practiced on the site or nearby area, nor existence of any known valued cultural, historical or native resources. A condition of approval will protect any unidentified cultural, historical, and natural resource in the event any are encountered during construction.

Lastly, this approval is made with the understanding that the Applicant remains responsible for complying with all other applicable governmental 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 the 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 request for a Special Management Area Use Permit to allow the consolidation of three (3) existing lots and its re-subdivision into a 7-lot gated single-family residential subdivision with its related improvements is approved.