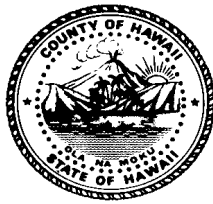


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## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

September 7, 2022

Mr. and Ms. John and Shelli Meneghetti  
3621 Divisadero Street  
San Francisco, CA 94123  
VIA EMAIL

Dear Mr. and Ms. Meneghetti:

**SUBJECT: Special Management Area Use Permit Application (PL-SMA-2022-000017)**  
**Applicant: John and Shelli Meneghetti**  
**Request: To Construct a Single-Family Dwelling and Related Improvements**  
**Tax Map Key: (3) 7-5-005:095; North Kona, Hawai'i**

The Leeward Planning Commission, at its duly held public hearing on August 18, 2022, voted to approve the above-referenced application to construct a two-story, 4,798-square foot, 5-bedroom, 4.5-bath single-family residence and related improvements, which include a swimming pool, garage, and lanai, on a 0.38-acre parcel situated within the Special Management Area. The subject property is located within the Lanihau Point Subdivision of Kona Bay Estates at 75-5434 Kona Bay Drive, approximately 0.7 miles from Kona Bay Drive's intersection with Kuakini Highway, portion of Kailua Airport, North Kona District, Hawai'i.

Approval of this application is subject to the following conditions:

1. The applicant(s), its successor(s) or assign(s) ("Applicant") shall be responsible for complying with all of the 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 proposed development shall be completed within five (5) years from the effective date of this permit.
4. Other than the proposed project as described in this permit, no further work is permitted under this approval.
5. Construction of the single-family residence and related improvements shall be conducted in a manner that is substantially representative of plans and details as contained within the Special Management Area Use Permit application dated May 20, 2022 and representations made to the Leeward Planning Commission.

6. Prior to any land alteration on the property, the Applicant shall have a licensed land surveyor place and maintain stakes and flags at the location of the shoreline setback line, as shown on the approved plans. Stakes and flags shall be placed at intersections with the side yard boundaries and at (appropriate) intervals along the setback line; the stakes shall be clearly visible at all times. Stakes and flags shall remain in place until the time that the approved activity and/or structure is completed and has received final inspection by the Department of Public Works, Building Division.
7. The Applicant shall conduct subsurface testing of the property and submit its findings to the Planning Department for Hawai'i Revised Statutes Chapter 6E-42 review. The Applicant shall implement any mitigation required by the State Historic Preservation Division prior to any land altering activities for the proposed development.
8. 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 minimum 40-foot shoreline setback area without securing a prior written determination of minor structure or activity pursuant to Planning Department Rule 11-8 from the Planning Director or approval of a Shoreline Setback Variance from the Leeward Planning Commission.
9. The Applicant shall not, at any time, impede or otherwise restrict lateral public access along the shoreline and within the 4-foot-wide public pedestrian access easement of the *ala loa* trail located on the makai side of the subject parcel.
10. All site plans submitted to the Planning Department or Department of Public Works for any future land use permits or development on the subject parcel shall include the location of the public pedestrian access (or) easement, location of the certified shoreline, and the location of the minimum 40-foot shoreline setback line.
11. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
12. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties or the ocean. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
13. The Applicant shall ensure that excessive siltation and turbidity of 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.
14. 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.

15. 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.
16. No nighttime construction shall occur during the seabird fledgling season, from September 15 to December 15 each year.
17. The property shall connect to the public sewer in accordance with Section 21-5 of the Hawai'i County Code.
18. 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 (SHPD) at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from SHPD when it finds that sufficient mitigation measures have been taken.
19. An extension of time for the performance of the conditions contained herein may be granted by the Planning Director upon the following circumstances:
  - 1) 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.
  - 2) Granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
  - 3) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
  - 4) If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Leeward Planning Commission for appropriate action.
20. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

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.

Mr. and Ms. John and Shelli Meneghetti  
September 7, 2022  
Page 4

Should you have any questions, please contact Alex Roy of the Planning Department at (808) 961-8140 or by email at [Alex.Roy@hawaiicounty.gov](mailto:Alex.Roy@hawaiicounty.gov).

Sincerely,

*Michael Vitousek*

[Michael Vitousek \(Sep 7, 2022 15:55 HST\)](#)

Michael Vitousek, Chairman  
Leeward Planning Commission

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Attachment: Planning Commission Findings

cc w/att. via email: Mr. Winton Nicholson, Nicholson LLC  
Department of Public Works  
Department of Water Supply  
Department of Finance, Real Property Tax Division  
State Department of Land and Natural Resources  
- State Historic Preservation Division  
GIS Section

**COUNTY OF HAWAI‘I PLANNING DEPARTMENT**  
**PLANNING COMMISSION FINDINGS**

**JOHN AND SHELLI MENEGHETTI**  
**SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION**  
**(PL-SMA-2022-000017)**

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At the Planning Commission meeting on August 18, 2022, the Leeward Planning Commission voted to approve the subject Special Management Area Use Permit No. PL-SMA-2022-000017 with the addition of Condition No. 7, adding the requirement for the State Historic Preservation Division (SHPD) HRS, Ch. 6E-42 review. Based on the following findings Special Management Area Use Permit No. PL-SMA-2022-000017 is hereby approved to construct a two-story, 4,798 square foot, 5-bedroom, 4.5-bath single-family residence and related improvements which include a swimming pool, garage, and lanai, on a 0.38-acre parcel situated within the Special Management Area. The subject property is located within the Lanihau Point Subdivision of Kona Bay Estates at 75-5434 Kona Bay Drive, approximately 0.7 miles from Kona Bay Drive’s intersection with Kuakini Highway, por. of Kailua Airport, North Kona District, Hawai‘i, TMK: (3) 7-5-005:095.

The applicant’s request is to build a single-family residence on a 0.38-acre shoreline property located within the Lanihau Point Subdivision of Kona Bay Estates in the Special Management Area (SMA). The two-story home would have 3,017 square feet (sf) of interior space, with 5 bedrooms and 4.5 baths, and various other rooms. Together with the attached garage, a lanai, a swimming pool (56 feet x 8 feet on the makai side of dwelling), and other features such as a landscaping just mauka of the public access wall in the shoreline setback area, the total development area for the residence is 4,798 sf. The home will be connected to existing utility lines already established within the Kona Bay Estates Subdivision.

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 single family residence project is located in a 40-lot subdivision to which approximately 35 of the 40 lots have been developed with large single-family residential structures and related uses, including pools on the makai side of the parcels. Although the Kona Bay Estates subdivision was created in 1951, it was not until the late 1990s and throughout the 21st century that residential construction began. The subject property and the adjacent lots were the final set of lots to be subdivided. A review of Google Earth aerial imagery spanning between 1985 through 2002 shows that the initial clearing of the subject parcel began in the early 2000s. By 2014, a residential structure was constructed on the adjacent lot (parcel 096). No construction other than the residence and related development is proposed since the roadway access, utilities, walls, and access paths are already established and in use. The existing shoreline access path makai of the proposed residence will remain open during and after construction.

An archeological inventory survey (AIS) of the project area was completed prior to the creation of the existing subdivision, and prior to the grading done to construct walls and level the subject parcel. Based on these previous studies, no sites appear to be present on the surface. Additionally, based on the limited soil formation in this area and subsurface proximity of the bedrock to the surface, no buried sites are anticipated within the project area. The submitted Cultural Analysis (CA) survey of the site has determined that no historic properties will be affected by the proposed project. Staff agrees with this determination since the subject parcel has previous studies which indicated that there are no sites present within the subject parcel. Current cultural practices include fishing, hiking, and gathering of marine resources in the shoreline area makai of the subject parcel. None of these practices will be altered or restricted during or after construction of the residence. The proposed single-family residence is considered a permitted use within the Urban District and as designed will not alter or impact existing coastal resources.

The subject parcel is designated as Zone D and Zone AE of the FEMA Flood Insurance Rate Maps (FIRM). All development and habitable structures will be sited within the Zone D portion of the parcel, which is above the 10-foot elevation contour. Staff notes that the existing raised shoreline path located on top of a wall would provide

some protection should ocean waves reach that point. If overtopping of the wall occurs the main residential structure will still be approximately 25 feet further mauka.

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 a single-family residence and related development on 0.38 acres of land will not have a significant adverse environmental or ecological effect upon the Special Management Area.

**In review of the SMA guidelines as listed under HRS 205A-26(2)(B), the proposed development 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, Hawai'i 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. The objectives and policies of Chapter 205A, HRS 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 construction 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:

*Recreational Resources:*

Objective: To provide coastal recreational opportunities accessible to the public.

Policies: (ii) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by: Providing and managing adequate public access, consistent with the conservation of natural resources, to and along the shorelines with recreational value.

Existing public access to and along the shoreline is as follows: there are three (3) shoreline access points in Lanihau and Kona Bay Estates, the subdivision of the subject parcel. The access points are directed to "Keiki Pond," a large tidal pool, as well as a paved walking path along the shoreline. The paved walking path stretches from the Keiki Pond to the Old Airport State Recreation Area, extending through the makai-side of the subject parcel. The shoreline is characterized by lava rock, tidal pools, and some white sand. The shoreline is frequented by fishers, swimmers, sunbathers, and hikers. Kona Bay Estates is a private community, but public access to the shoreline is directed through the makai-side of a public baseball and football field north of the subject parcel. The nearest public access from the subject parcel to the walking path in Kona Bay Estates is available via a shoreline access point nine parcels east of the subject parcel. Additionally, public access to the walking path is available from the Old Airport State Recreation Area one parcel west of the subject parcel. The shoreline access points and shoreline walking path will not be impacted by the proposed project.

*Historic Resources:*

Objective: To protect, preserve, and, where desirable, restore those natural and

manmade historic resources in the coastal zone management area that are significant in Hawaiian and American history and cultural.

Policies: (i) Identify and analyze significant archaeological resources.

The subject parcel has undergone previous archeological and cultural analysis and research by professional archeologists to determine the presence and significance of historic sites in this area. The most recent cultural analysis concluded that there would be no effect on any cultural, or historic sites or uses, and that no sites or features were identified (primarily due to the lack of soil, vegetation, and previous grading activities).

*Scenic and Open Space Resources:*

Objective: Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policy: (iii) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources.

The proposed project site is minimally visible from the vantage point of the public highway, since the view from the highway towards the project site would be hindered by the Outdoor Hockey Rink at the Old Airport State Recreation Area as well as tall trees beyond it. The proposed project will not impact scenic or open space resources. The proposed use of a single-family residence is consistent with the other homes along this section of shoreline. The proposed project will maintain existing public access and would not adversely affect any sight lines or scenic resources in any way.

*Coastal Ecosystems and Marine Resources:*

The subject property abuts the shoreline; however, the design of the proposed residence 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 subject property is designated as Zone D and Zone AE on the Flood Insurance Rate Maps (FIRM). All development will occur within Flood Zone D, above the 10ft elevation contour. In the rare event of an overtopping of the raised, makai lateral shoreline path, there may be some damage to the landscaping and residence confined by the raised path and modern rock walls, however, serious adverse impact to water quality or coastal processes would not occur. According to the Sea Level Rise exposure area mapping program SLR-Xa, the exposure area for 3.2 feet of sea level rise or 3.2 feet of passive flooding does not contact the makai lateral shoreline path and is a considerable distance from the proposed construction area on the subject parcel. Staff notes the entire parcel is located within the Tsunami Evacuation Zone.

Based upon the above information, the proposed development is consistent with the objectives and policies of Chapter 205A, HRS.

**In review of the SMA guidelines as listed under HRS 205A-26(2)(C), the proposed development is consistent with the County General Plan, the Zoning Code and the Kona Community Development Plan (KCDP).** The parcel is zoned Single Family Residential- 15,000 square feet (RS-15) by the County of Hawai'i. RS-15 is



defined as a Single-Family Residential District where the minimum building site area is 15,000 square feet. The subject parcel has a building site of 16,626 square feet. The proposed single-family residence, adhering to its applicable building and shoreline setbacks, is consistent with the lot's designated zoning. The proposed development will not create greater density than the zoning intends.

The proposed project conforms to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Open (ope). In the 2005 Hawai'i General Plan, the Open (ope) designation is defined as "*parks and other recreational areas, historic sites, and open shoreline areas.*" This designation is consistent with the existing development of Kona Bay Estates as the development is oriented towards public recreation and use. A makai-side easement extends along the lots of all shoreline residences on Kona Bay Estates which connects pedestrians from the Keiki Ponds to the Old Airport Recreation Area. The lateral shoreline path is frequented by tourists and locals as a thoroughfare, but it is also used as a public place to stop and observe the tidal pools, and fish from the coastline makai of the subject parcel.

The proposed project aligns with the LUPAG policies relevant to Open Land Use spaces, which are slated to *provide and protect open space for the social, environmental, and economic well-being of the County of Hawai'i and its residents* as well as to *protect designated natural areas*. The proposed construction of a single-family residence and related development is keeping within these goals as it will continue to provide designated and reliable access for the public to access the shoreline and adjacent parks which aid in managing impacts from the public on the shoreline. In keeping with the other established residences of the Kona Bay Estates, the proposed project is designed around maintaining the existing public access to the shoreline. The shoreline access path within the 4-foot wide makai-side easement will remain open and accessible during the entirety of construction and afterwards.

The Kona Community Development Plan (KCDP) for the area of North Kona includes guiding principles that the proposed project will maintain, including *preserving the diverse coastlines, protected nearshore waters, open space, and vast untouched upland landscapes*, and to *direct future growth patterns toward compact villages, preserving Kona's rural, diverse, and historical character*. The proposed development aligns with the above mentioned KCDP principles as it occurs within a designated, subdivided lot, between existing single-family residences of similar style and size. It does not disrupt untouched landscapes as the lot has been previously graded and includes existing minor construction (walls). No part of the development is proposed within the shoreline setback, nor will it impact the public access on the makai side of the parcel, thus helping to preserve the coastline.

**The proposed development will not have a significant adverse impact to traditional and customary Hawaiian rights:** 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. 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 applicant submitted a Cultural Analysis (CA) report for the subject parcel to address the preservation and protection of customary

and traditional Hawaiian practices that may occur on or around the subject parcel. A review of the cultural-historical background information specific to the project area identified a portion of the *ala loa*, a historic coastal trail that once traversed through the project area. This trail meandered along the coastal portion of Lanihau and the neighboring ahupua‘a and connected to the royal settlement at Kamakahonu. That portion of the trail that once extended through the Kona Bay Estates subdivision has been destroyed as a result of ongoing residential development. Concerning that portion of the ancient *ala loa* trail identified within the project area, the *Ala Kahakai National Historic Trail Draft Comprehensive Management Plan & Environmental Impact Statement* resolved that “In Kona Bay Estates and Lanihau subdivisions traditional access rights were asserted via a lawsuit”. As a result, the *ala loa* was restored by relocating it on a low rock wall fronting each of the lots in the Kona Bay Estates Subdivision.

*Possible adverse effect or impairment of valued resources:* Regarding the potential for the inadvertent discovery of human skeletal remains along the shoreline following periods of large surf, it is recommended that in the event that skeletal remains wash up along the shoreline, the landowner will contact the appropriate agencies including DLNR- State Historic Preservation and Division (SHPD) and Division of Conservation and Resources Enforcement (DOCARE). To prevent impacts on the nearshore fisheries, which are a valued cultural resource and are associated with customary subsistence practices, it is recommended that all residential waste that may be generated from sewage, landscaping runoff, pool, and other household waste is disposed of properly to prevent runoff from entering into the nearshore fisheries. Taking actions to prevent runoff will help to protect the resources within the nearshore fishery and its associated subsistence practices. Adherence to the above-described recommendations will help ensure that the above-identified valued cultural, historical, or natural resources and traditional customary practices are not adversely impacted by the proposed project.

*Feasible actions to protect native Hawaiian rights:* The subsequent relocation of the *ala loa* trail route to the makai side of the Kona Bay Estates lots has mitigated impacts on the *ala loa*. As such, there are no anticipated impacts to the *ala loa* trail from the proposed project, and it was determined by the CA that no additional actions on behalf of the landowner or the approving agencies are required as the *ala loa* will remain unimpeded and accessible by the public during construction and after completion of the project.

Based on the above findings, the proposed development will not have any substantial adverse impacts on the surrounding area, 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.