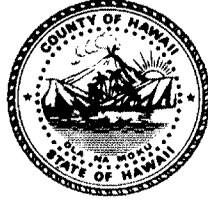


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September 05, 2024

Mr. Kevin Sakai
County of Hawai'i Department of Parks and Recreation
101 Pauahi Street, Suite 6
Hilo, HI 96720

Dear Mr. Sakai:

SUBJECT: Special Management Area Use Permit Assessment Application
(PL-SAA-2024-000237)
Applicant: County of Hawai'i, Department of Parks and Recreation
Landowner: State of Hawai'i
Project: Removal of Three (3) Trees at Samuel Spencer Beach Park
Tax Map Key: (3) 6-2-002:008, South Kohala District, Island of Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2024-000237), submitted to this office on July 26, 2024. The applicant is requesting to remove three (3) Kiawe trees (*Prosopis pallida*) at the County managed Samuel M. Spencer Beach Park and perform general tree trimming and related maintenance to the remaining trees on or adjacent to the shoreline.

The 13.3650-acre parcel is zoned Open by the County, Urban by the State Land Use Commission (LUC) and designated Open (ope) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The parcel is located within the Special Management Area (SMA) and is located within the "shoreline area" as defined by section 205A-41, Hawai'i Revised Statutes (HRS). A portion of the subject parcel is in Flood Zone VE.

Proposed Project:

The proposed project is to remove three (3) Kiawe trees at Samuel M. Spencer Beach Park. The proposal includes trimming, removing deadwood and volunteer growth to the remaining trees. Staff observes several of the trees to be maintained and removed appear to be located within the 40-foot shoreline setback.

Shoreline Setback Area Determination:

The entire project area is located within the Special Management Area (SMA) as well as located within the “shoreline area” as defined by section 205A-41, Hawai'i Revised Statutes (HRS). According to our review of the project site, the shoreline is situated at the makai edge of the project site, however, as some work will all occur within the shoreline setback area, a Shoreline Certification will not be required for the proposed project as it is unnecessary to determine the setback location.

The proposed project is to remove three (3) Kiawe trees at Samuel M. Spencer Beach Park. The proposal includes trimming, removing deadwood and volunteer growth to the remaining trees. Staff notes there is no public access, public trails, or public viewplanes that will be affected by this project. Staff notes that access to the shoreline and County Park will be improved by the proposed project, and the proposed action will not alter the exiting grade of the shoreline setback area.

Based on the preceding information, the Planning Department has determined the proposed activity may be permitted in the shoreline setback area without the need for a shoreline setback variance pursuant to County of Hawai'i Planning Department (PD) Rule 11-7(a): The following structures or activities may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department.

- Rule 11-7(a)(6): Structures which were completed by or activities which commenced prior to June 22, 1970; and
- Rule 11-7(a)(10): The structure or activity was determined by the Planning Department to be outside the shoreline setback area when it received legal approvals.

Additionally, in accordance with PD Rule 11-8(c): Structures or activities that qualify under Section 11-7(a)(6) through (10) may be routinely maintained.

Special Management Area Determination:

1. Pursuant to Hawai'i Revised Statutes (HRS) §205A-22, as amended, and Planning Commission Rule 9-4(i)(1), relating to the Special Management Area, “Development means any of the [listed] uses, activities, or operations on land or in or under water within the special management area. According to the application, the following definitions of “Development” can be applied to the proposed use:

- (A) *Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste.*

2. Pursuant to Planning Commission Rule 9-4(i)(3), “any proposed use, activity, or operation listed in Section 9-4(i)(2) shall be deemed to be “Development” until the Director has determined it to be exempted from the definition of “development.” According to 9-4(i)(2), “Development” does not include the following uses, activities, or operations, and therefore is determined to be exempt from the definition of “Development.”
 - (F) *Repair, maintenance, or interior alterations to existing structures or related uses;*
 - (G) *Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan;*
3. Pursuant to Planning Commission Rule 9-4(i)(4), “*whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity or operation shall be defined as “development” for the purposes of this rule.*”

Based on the information provided, the Director finds the removal of three (3) Kiawe trees at Samuel M. Spencer Beach Park is exempt from the definition of “development” and will not have a cumulative impact, or significant adverse environmental or ecological effect on the Special Management Area.

Please note, due to several of the tree work will be within the 40-ft shoreline setback, no re-grading or heavy machinery is allowed within the shoreline setback area.

Lastly, any substantive changes to the improvements listed in the current application may require further review by this office and possibly the submittal of another SMA Use Permit Assessment Application.

While further review of the proposed activities against the Special Management Area rules and regulations will not be required at this time, all other applicable Zoning and Building Code requirements must be satisfied. Additionally, pursuant to Planning Commission Rule 9-10(g), “*The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity or operation does not have a substantial adverse effect on the Special Management Area.*”

The Director has added the following conditions for the proposed project:

Director's 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. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
4. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
5. No grading, re-grading or heavy machinery shall be allowed within the shoreline setback area.
6. 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.
7. Any substantive changes or further development, including but not limited to, the design and size of the improvements not included in this determination shall require further review and approval as provided under Chapter 205A, HRS, and Rule 9, Planning Commission Rules of Practice and Procedure.
8. That in issuing this determination, the Department has relied on the information and data that the Applicant has provided in connection with this determination. If, subsequent to issuance of this determination, such information and data prove to be false, incomplete, or inaccurate, this determination may be modified, suspended, or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings.

Kevin Sakai
County of Hawai'i Department of Parks and Recreation
September 05, 2024
Page 5

9. The Planning Director shall initiate procedures to revoke this determination should any of the conditions not be met or substantially complied with in a timely fashion.

If you have questions regarding this document, please feel free to contact Derek Harbaugh of this office at (808) 323-4774 or via email at derek.harbaugh@hawaiicounty.gov.

Sincerely,


Zendo Kern [Sep 5, 2024 08:27 HST]

ZENDO KERN
Planning Director

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cc via email: GIS Section