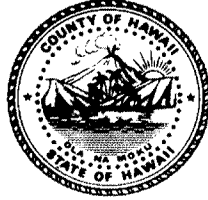


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September 05, 2024

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-2024-000242)
Applicant: County of Hawai'i, Department of Parks and Recreation
Landowner: State of Hawai'i
Project: Construct ADA Compliant Concrete Walkway and Placement of a
Temporary Mobi-Mat in the Shoreline Setback Area
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-2024-000242), submitted to this office on August 1, 2024. The applicant is requesting to construct a 6-foot wide by 50-foot-long Americans with Disabilities Act (ADA) compliant concrete walkway and a 5-foot wide by 50-foot long "Mobi-mat" extending from the concrete walkway through the shoreline setback area to the shoreline. The intention of the proposed project is to comply with the County of Hawai'i's ADA Transition Plan.

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 construct a 6-foot wide by 50-foot-long concrete walkway at Samuel M. Spencer Beach Park. The proposal also includes the placement of a temporary 5-foot wide by 50-foot long Mobi mat to extend from the newly constructed concrete walkway to the shoreline. The placement of the Mobi-mat in the shoreline setback area will require the sand to be leveled

to provide a stable substrate for the mat in accordance with Americans with Disabilities Act Accessibilities Guidelines. Securing the Mobi-mat will require stainless steel stakes to prevent and allows for the mat to be removed in the eventuality of a high wind event.

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 constructing a concrete walkway and placement of a temporary Mobi-mat at Samuel M. Spencer Beach Park. 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.

Pursuant to Planning Department Rule 11-8, *“A minor structure and minor activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.”*

Additionally, 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.

- (4) *A minor structure or activity approved in accordance with Section 11-8.*

Based on the above information and written submitted request, the Planning Department has determined the proposed activity the shoreline setback area is permitted as a minor structure and does not need a shoreline setback variance.

Hawai'i Revised Statutes (HRS) Ch. 343 Determination:

Pursuant to HRS Ch. 343-5(3), *an Environmental Assessment (EA) shall be required for actions that propose any use within a shoreline area as defined in HRS Ch. 205A-41.* However, in conformance with Hawai'i Administrative Rules (HAR) Ch. 11-200.1-15(c)(4), *Minor alternations in the conditions of land, water or vegetation* does not require an EA or Ch. 343 review.

The project is designed to conform to the ADA rules by constructing a new concrete walkway and temporary Mobi-mat extending from the walkway to the shoreline. The proposed project will not alter the existing topography of the beach sandy area.

Based on the proposed activities described above, this project is considered exempt from the preparation of an EA. No further Ch. 343 review is required.

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 relating to existing uses;*
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 proposed construction of a concrete walkway and temporary Mobi-mat 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 work being conducted in the shoreline setback area, no heavy machinery shall be used 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.
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
Zendo Kern (Sep 5, 2024 08:27 HST)

ZENDO KERN
Planning Director

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cc via email: GIS Section