

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

DEC 17 2013

Ms. Aubrey Summers
County of Hawai'i
Department of Parks & Recreation
101 Pauahi Street, Suite 6
Hilo, HI 96720

Dear Ms. Summers:

Special Management Area Use Permit Application (SMA 13-000054)
Request: To Establish a New Neighborhood Park
Applicant: County of Hawai'i, Department of Parks and Recreation
Tax Map Key: 7-6-019:034

The Leeward Planning Commission at its duly held public hearing on November 21, 2013, voted to approve the above-referenced request to allow the establishment of a new neighborhood park and related improvements on approximately 1.63 acres of land in the Special Management Area. The property is the site of a vacant lot located between Lehua Road and Pakalana Road in the Ali'i Kai Subdivision, Hōlualoa, North Kona, Hawai'i

Approval of this request is based on the following:

The applicant requests an SMA Use Permit in order to develop a neighborhood park in the Ali'i Kai subdivision, which will consist of grading and landscaping, construction of retaining walls and perimeter fencing, concrete walking paths, a paved parking lot, a comfort station, a pavilion with picnic tables, playground equipment, miscellaneous park features such as benches, drinking fountains, etc., and related accessory uses. The project is anticipated to be completed in phases with the first phase comprised of grading and landscaping, construction of retaining walls and perimeter fencing, and installation of accessible walkways. The project is estimated to cost approximately \$2 million. The purpose of the project is to provide a neighborhood park to primarily serve residents of the Ali'i Kai subdivision. The park will be used for both

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passive and limited active recreational purposes such as picnicking, strolling, children playing on play equipment, ball playing, and occasional parties.

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, restore the natural resources of the coastal zone areas. Therefore, special controls on development within the SMA are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means. The grounds for approving an SMA permit are based upon the following criterion listed in bold type:

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. An environmental assessment (EA) was completed in November 2010 to determine potential impacts of developing a neighborhood park on the physical environment, socioeconomic and cultural resources, and infrastructure. With implementation of the following mitigation measures, the County Department of Parks and Recreation concluded that no significant environmental or ecological effects would occur and a Finding of No Significant Impact (FONSI) determination was issued for the final EA on December 8, 2010:

- *Drainage:* The applicant will contain all development-generated water runoff on-site through the installation of drywells.
- *Noise/Air Quality:* Short-term impacts related to air quality and noise are anticipated during construction activities which will be mitigated by the applicant's contractor complying with provisions of the State Department of Health's administrative rules related to air pollution control, fugitive dust and noise.
- *Fauna/Wildlife:* Trimming or removal of woody plants greater than 15 feet in height shall not be removed or trimmed during Hawaiian hoary bat birthing and pup rearing season (May 15 through August 15).

The proposed development is consistent with the objectives and policies 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 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.

Coastal Recreational Resources: The property is located approximately 1,300 feet mauka of the shoreline in a residential subdivision and therefore will have no adverse impacts on coastal recreational resources.

Historic Resources: An archeological assessment of the property conducted by Haun & Associates in April 2010 determined that no historic sites or features are present on the property; likely due to previous grading when the subdivision was created in the early 1960's.

Scenic and Open Space Resources: The sea can be viewed from the middle of the property above the tree line and at the north (mauka) portion of the property. The proposed improvements will not alter the existing view plane to the sea.

Coastal Ecosystems and Marine Resources: To address the potential impacts of soil erosion and water quality on marine resources and coastal ecosystems the applicant will implement best management practices as part of the NPDES permit process and comply with Chapter 10, Erosion and Sedimentation Control, Hawai'i County Code. Additionally, the applicant will install a septic system and leach field to dispose of wastewater generated at the comfort station.

Beach Protection: There are no beaches on or near the subject property.

Coastal Hazards: The elevation of the property varies from approximately 66 to 106 feet above mean sea level. The subject property is located outside of the tsunami evacuation zone as designated by the County Civil Defense Agency and is located in Flood Zone "X", an area determined by FEMA to be outside the 500-year flood plain.

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

The proposed development is consistent with the County General Plan, Kona Community Development Plan (CDP), Zoning Code and other applicable

ordinances. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designation for the property is Low Density Urban, which allows residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The proposed park is considered a community use that will directly serve residents within the Ali'i Kai subdivision.

The proposed neighborhood park is consistent with Public Facilities Policy 6.2 of the Kona CDP which seeks to provide a range of recreational opportunities to encourage physical activity and interaction among toddlers, youth teens, adults and seniors through the creation of parks, civic auditoriums and performing arts centers. The park is also consistent with the County zoning, as neighborhood parks, playgrounds, tennis courts, swimming pools, and similar neighborhood recreational areas and uses are permitted on Single-Family Residential (RS) zoned lands. Based upon the above information, the proposal conforms to the County General Plan, Kona CDP and County zoning code.

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. 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: An archaeological assessment of the property, conducted in April 2010 by Haun & Associates, determined that no historic sites or features are present on the property; likely due to previous grading when the subdivision was created in the early 1960's. Site visits of the property determined that no threatened, listed or endangered species are present at the site.

The valuable cultural, historical, and natural resources found in the area: According to US Fish and Wildlife Service, the federally endangered Hawaiian hoary bat may occur in the project vicinity. The bats roost in exotic and native woody vegetation leaving their young unattended in "nursery" trees or shrubs when they forage.

Possible adverse effects or impairment of valued resources: Related to the endangered Hawaiian hoary bat, if trees or shrubs suitable for bat roosting are cleared or trimmed during bat breeding season (May through August), there is a risk that young bats could inadvertently be harmed or killed. There are no known valued cultural or historic resources associated with the property. The property does not abut the shoreline, therefore Hawaiian gathering and fishing activities will not be affected by the proposed park development.

Feasible actions to protect native Hawaiian rights: Based on the US Fish and Wildlife Service's recommendation for protection of the Hawaiian hoary bat, a condition of approval will be included in the permit to prevent trimming or clearing trees and shrubs suitable for bat roosting during breeding season. To protect unknown historic or cultural resources, a permit condition will also be added requiring the applicant to cease work until the DLNR-SHPD has provided clearance to continue work, should any unidentified cultural or historical resource be encountered during construction activities.

With implementation of the conditions of approval, the proposed action will not affect traditional Hawaiian rights.

Based on the above findings, the proposed park 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, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to commencing construction, the applicant shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify, if applicable, all proposed structures, fire protection measures, paved driveway access and parking stalls, and other improvements associated with the proposed use.
3. To protect the endangered Hawaiian hoary bat during breeding and pup-rearing season, woody vegetation greater than 15 feet in height shall not be removed or trimmed between May 15 and August 15 throughout the construction and ongoing operations of the proposed development.
4. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
5. All earthwork activity, including grubbing and grading, shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.

6. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activities.
7. During construction, measures shall be taken to minimize the potential of fugitive dust and excess noise. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i and the State Department of Health, Hawai'i Administrative Rules, Chapter 11-60.1 (Air Pollution Control) and Chapter 11-46 (Community Noise Control).
8. 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-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
10. 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.

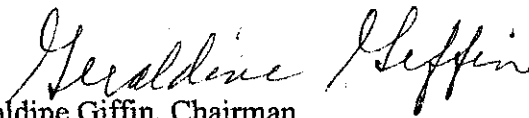
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Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

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.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Geraldine Giffin, Chairman
Leeward Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Department of Land and Natural Resources/HPD
Ms. April Surprenant
Zoning Inspector
Plan Approval Section
Mr. Gilbert Bailado